

**Before the Office of Administrative Hearings
600 North Robert Steet
Saint Paul, Minnesota 55101**

**For the Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, Minnesota 55101**

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| IN THE MATTER OF THE PETITIONS FOR RECOVERY OF CERTAIN GAS COSTS | OAH Docket No. 71-2500-37763 |
| 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 | MPUC Docket No. G008/M-21-138 |
| IN THE MATTER OF THE PETITION BY GREAT PLAINS NATURAL GAS CO., A DIVISION OF MONTANA-DAKOTA UTILITIES CO., FOR APPROVAL OF RULE VARIANCES TO RECOVER HIGH NATURAL GAS COSTS FROM FEBRUARY 2021 | MPUC Docket No. G004/M-21-235 |
| IN THE MATTER OF A PETITION OF NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY TO RECOVER FEBRUARY 2021 NATURAL GAS COSTS | MPUC Docket No. G002/CI-21-610 |
| IN THE MATTER OF THE PETITION OF MINNESOTA ENERGY RESOURCES CORPORATION FOR APPROVAL OF A RECOVERY PROCESS FOR COST IMPACTS DUE TO FEBRUARY EXTREME GAS MARKET CONDITIONS | MPUC Docket No. G011/CI-21-611 |

**SURREBUTTAL TESTIMONY
OF RONALD NELSON
ON BEHALF OF
THE CITIZENS UTILITY BOARD OF MINNESOTA**

February 11, 2022

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**SURREBUTTAL TESTIMONY OF
RONALD NELSON
ON BEHALF OF THE CITIZENS UTILITY BOARD OF MINNESOTA**

I. Introduction and Qualifications

1 **Q1. Please state your name and position.**

2 A1. My name is Ron Nelson. I am a Senior Director at Strategen Consulting located
3 at 2150 Allston Way Suite 400, Berkeley, California 94704.

4 **Q2. On whose behalf are you testifying?**

5 A2. I am testifying on behalf of the Citizens Utility Board of Minnesota (“CUB”).

6 **Q3. Was this testimony prepared by you or under your direction?**

7 A3. Yes. As with my direct testimony, this testimony was prepared by me or under my
8 direction.

**II. Summary of Strategen’s Prudency Analysis and Disallowance
Recommendations**

9 **Q4. Did you make any adjustments to your disallowance recommendations.**

10 A4. Yes, I agree with Witness Cebulko’s Surrebuttal Testimony and the modifications
11 to his disallowance ranges.

12 **Q5. What are your updated disallowance recommendations for each utility?**

1 significantly escalated levels – the 98th percentile from the previous five years, or
2 \$15/Dth, that pipelines had issued warnings about possible supply cuts, that
3 wellhead freeze-offs were occurring in Texas and Oklahoma, that the worst of the
4 storm was projected for February 14, that their traders believed that the price of
5 natural gas would continue to climb over the weekend, and that the Company
6 would be subject to the as of yet unknown prices. By February 16, when
7 CenterPoint developed a supply plan for February 17, the Company knew of the
8 unprecedented nature of the Event. CenterPoint chose not to maximize
9 curtailments or use its available LNG and propane peaking resources to mitigate
10 costs to customers during the Event.

11 On Surrebuttal, Witness Cebulko and I accept a handful of modifications
12 to our disallowance assumptions. Witness Cebulko re-developed a range of
13 disallowances between \$28.9 million and \$144.9 million based on several
14 scenarios that are both plausible and reasonable.¹ After reviewing Witness
15 Cebulko’s analysis and range of disallowances, I am proposing the Commission
16 disallow of \$82.4 million of costs from CenterPoint. My disallowance
17 recommendation is based on my conclusion that 1) CenterPoint’s actions were
18 imprudent over the entire five days of the Event and 2) of the two peaking
19 facilities dispatch scenarios Witness Cebulko developed, adopting the more
20 conservative scenario that incorporates modest dispatch of both LNG and propane

¹ Direct Testimony and Schedules of Bradley Cebulko on Behalf of the Citizens Utility Board of Minnesota, MPUC Docket Nos. G008/M-21-138, G004/M-21-235, G002/CI-21-610, G011/CI-21-611, OAH Docket No. 71-2500-37763, (Dec. 22, 2021) (“Cebulko Direct”), p.8-9.

1 facilities better balances the public interest in balancing reliability and economic
2 considerations.

3 **Q7. Please summarize the key conclusions reached with regards to whether**
4 **MERC acted prudently prior, during, and after the Event.**

5 A7. Consistent with our Direct testimony, we find that some of MERC's action prior
6 to and during the Event were imprudent. Like CenterPoint, MERC was aware of
7 the uncertainty of the weekend as described in Q6 and A6 above. MERC
8 substantially over-projected load for MERC Northern Natural Gas (NNG) on the
9 key planning date of February 17, however, based on new information given to us
10 during Rebuttal, we longer find that MERC imprudently over-forecasted load for
11 February 14. The scale of MERC's over-projections on February 17 and have not
12 been sufficiently justified by MERC. As a result, the Company was unable to
13 maximize storage to the extent that would have been possible with less over-
14 supply. In addition, MERC did not request any curtailments during the Event.

15 CUB Witness Cebulko developed a range of disallowances between \$2.5
16 million and \$8.1 million.² After reviewing Witness Cebulko's analysis and range
17 of disallowances, I am proposing the Commission disallow \$8.1 million of costs
18 from MERC.

19 **Q8. Please summarize the key conclusions reached with regards to whether Xcel**
20 **Energy acted prudently prior, during, and after the Event.**

² Cebulko Direct, p. 9-10.

1 A8. Consistent with our Direct testimony, we find that some of Xcel's action prior to
2 and during the Event were imprudent or that Xcel has not sufficiently met its
3 burden of proof in this case. Like CenterPoint and MERC, Xcel was aware of the
4 uncertainty of the weekend as described in Q6 and A6 above.

5 Xcel over-procured expensive spot purchases during the Event and was
6 unable to maximize storage because of its poor load forecasting prior to the Event.
7 Xcel has not adequately explained why it pulled its propane facilities out of use
8 and then kept them out of use for repairs that appear to have not been necessary at
9 the time. We remain uncertain whether Xcel has met its burden of proof that it
10 adequately maintained and operated its LNG facility. Should the Commission find
11 Xcel's actions related to the maintenance and operation of its peaking facilities to
12 be imprudent, we believe the Commission should also consider the economic
13 consequences of those facilities being unavailable during the Event. We believe
14 that the utility should have used its peaking resources to help mitigate the
15 financial impact of the Event to customers, and could have done so in a way that
16 ensured the utility had sufficient peaking supplies for the rest of the winter season.

17 Finally, on Surrebuttal, we remove our disallowance for Xcel's release of
18 interruptible customers from curtailments on February 17 as the disallowance
19 double counted the Company's imprudent load forecasts.

20 CUB Witness Cebulko developed a range of disallowances between \$4
21 million and \$125.5 million.³ After reviewing Witness Cebulko's analysis and

³ Cebulko Direct, p.10-11.

1 range of disallowances, I am proposing the Commission disallow the cost
2 recovery of 57.9 million for Xcel.
3

III. Prudency Standard

4 **Q9. What is the purpose of this section?**

5 A9. In this section, I respond to the concerns raised by the utilities in Rebuttal
6 regarding CUB’s conception and application of the prudence standard throughout
7 this proceeding. I demonstrate that the utilities have failed to justify the claim that
8 “in the application of this [prudence] standard to the facts in this case” we
9 “strayed from this standard.”⁴ Instead, the utilities’ objections are based largely
10 on mischaracterizations of CUB’s arguments or points that do not apply to CUB’s
11 analysis which, contrary to the utilities’ claims, is consistent with the MPUC’s
12 longstanding application of the prudence standard. In addition, I show that the
13 utilities have not provided the level of transparency that the MPUC has previously
14 required to demonstrate prudence.

15 A. Known and Knowable Standard

16 **Q10. What is the “known and knowable” standard?**

17 A10. As explained in my direct testimony:⁵

18 In Minnesota, as in several other jurisdictions, there is longstanding
19 precedent for prudence to be assessed based on “the facts that...[a utility]

⁴ Rebuttal Testimony and Schedules of John J. Reed on Behalf of CenterPoint Energy, MPUC Docket No. G-008/M-21-138, OAH Docket No. 71-2500-37763, (Jan 21, 2022) (“Reed Rebuttal”), p. 6, lines 7-8

⁵ Direct Testimony and Schedules of Ronald Nelson on Behalf of the Citizens Utility Board of Minnesota, MPUC Docket Nos. G008/M-21-138, G004/M-21-235, G002/CI-21-610, G011/CI-21-611, OAH Docket No. 71-2500-37763, (Dec. 22, 2021) (“Nelson Direct”), p. 21, lines 3-11

1 knew or should have known at the time of its action or decision.”⁶ The fact
2 that a better outcome could have been reached in hindsight is not in itself
3 permissible evidence in a prudence review; what matters is whether the
4 utility acted reasonably based on the facts that it “knew or should have
5 known” at the time. This is related to the concept of a “reasonable utility,”
6 which is expected to exercise “the care that a reasonable person would
7 exercise under the same circumstances at the time the decision was
8 made.”⁷

9 **Q11. How have the utilities characterized your arguments regarding the “known**
10 **and knowable” standard?**

11 A11. Although the utilities largely agreed with the explanation of the “known and
12 knowable” standard presented in my direct testimony, several utilities witnesses have
13 argued that CUB Witness Cebulko and I did not apply this standard to our analysis of
14 utility actions and that we relied inappropriately on hindsight.⁸ However, when justifying
15 this claim, the utilities have largely mischaracterized our arguments. For instance, some
16 utilities continue to insist that we expected perfect foresight, apparently ignoring that we
17 explicitly argued against this in direct.⁹

⁶ “Order Finding Imprudence, Denying Return on Cost Overruns, and Establishing LCM/EPU Allocation for Ratemaking Purposes,” MPUC Docket No. E-002/CI-13-754 In the Matter of a Commission Investigation into Xcel Energy’s Monticello Life-Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns, Minnesota Public Utilities Commission (May 8, 2015).

⁷ Administrative Law Judge Allen E. Giles, “Corrections to Report,” MPUC Docket No. E-001/GR-91-605 Report Issued in the Matter of the Application of Interstate Power Company to Increase its Rates for Electric Service in the State of Minnesota, *Minnesota Public Utilities Commission* (April 17, 1992).

⁸ For example, see: Reed Rebuttal, p. 6, lines 3-9; Rebuttal Testimony and Schedules of Theodore T. Eidukas on Behalf of Minnesota Energy Resources Corporation, MPUC Docket No. G011/M-21-611, OAH Docket No. 71-2500-37763, (Jan. 21, 2022) (“Eidukas Rebuttal”), p. 11, lines 3-6; Rebuttal Testimony and Schedules of Allen D. Krug on Behalf of Northern States Power Company, MPUC Docket No. G002/CI-21-610, OAH Docket No. 71-2500-37763, (Jan. 21, 2022) (“Krug Rebuttal”), p. 4, lines 9-11

⁹ For example, according to MERC Witness Mead, “[i]n light of the historical pricing information, forecasted weather, and other information that was known, I do not agree the Company could have anticipated an unprecedented pricing event.” Rebuttal Testimony and Schedules of Sarah R. Mead on Behalf of Minnesota Energy Resources Corporation, MPUC Docket No. G011/M-21-611, OAH Docket No. 71-2500-37763, (Jan. 21, 2022) (“Mead Rebuttal”), p. 9, lines 5-8

1 **Q12. Did you argue that the utilities should have predicted an unprecedented**
2 **pricing event?**

3 A12. No. In direct, I explicitly argued the opposite of this: “The utilities’ consistent
4 plea that they could not have foreseen unprecedented prices of over \$200/Dth is not the
5 focus of this prudence review. This is a red herring. No regulator could reasonably expect
6 utilities to perfectly forecast prices or foresee that price would reach unprecedented
7 levels.”¹⁰

8 **Q13. Why do you believe that some witnesses are continuing to mischaracterize**
9 **your argument in this manner?**

10 A13. As I explained in direct:

11 The utilities appear to be intentionally blurring the lines between perfect
12 foresight and the reasonable management of economic risk to suggest that,
13 because it is impossible to perfectly forecast extreme price spikes or weather
14 conditions, they cannot reasonably be expected to manage risk based on
15 information that is “known and knowable” at the time of their actions and
16 decisions. Such a conception of prudence would be contrary to this
17 Commission’s expectation that utilities “protect ratepayers from
18 unreasonable risks.”¹¹

19
20 It is worth repeating that, regardless of utilities’ specific price forecasts, *the utilities knew*
21 *that prices had already reached substantially inflated levels of over \$15/Dth – within the*
22 *98th percentile from the previous five years*¹² – when making their purchasing decisions
23 for the long weekend. As Witness Cebulko testifies on Surrebuttal, on February 12
24 CenterPoint and Xcel traders were aware of the significant price volatility for the

¹⁰ Nelson Direct, p. 29, lines 11-14

¹¹ *Id.*, p. 29, lines 4-10

¹² Analysis based on S&P Capital IQ Pro data.

1 upcoming weekend.¹³ As noted by CUB Witness Cebulko, “[t]here is no logical scenario
2 where the price over the weekend would decrease.”¹⁴ Given the planning circumstances
3 and “[t]he fact that prices turned out to be higher than anticipated does not mean that
4 utilities had no obligation to react to market conditions; it simply means that the cost of
5 failing to do so was substantially greater.”¹⁵ The utilities *also knew that prices had*
6 *reached unprecedented levels* when making their purchasing decisions for February 17,
7 yet they continued to not weigh gas prices sufficiently within their decision making.

8 **Q14. Have the utilities responded to your argument directly?**

9 A14. CenterPoint Witness Reed responded to my argument as follows:

10 Witness Nelson appears to take the position that Minnesota’s gas utilities
11 must protect their customers from gas supply price risks, no matter how
12 remote those price risks may be, and he offers no consideration of the cost
13 of such unbounded protection. He states that the foreseeability of the level
14 of the price spike that created the costs in this case is not the focus in this
15 prudence review, and that this issue raised by the utilities is a “red
16 herring.” This also represents a significant departure from the prudence
17 standard. The foreseeability of an outcome is an essential element of
18 considering whether a decision was prudent because it is understood that
19 not all risks can be avoided, and that it is uneconomic and unreasonable to
20 even attempt to eliminate all risk. Risk management, like insurance,
21 involves a careful examination of the likelihood and consequences of
22 accepting a risk, as compared to the cost of avoiding or mitigating it. The
23 foreseeability of a risk is a key part of that examination.¹⁶
24

25 **Q15. Do you agree with Witness Reed’s concerns?**

¹³ Surrebuttal Testimony and Schedules of Bradley Cebulko on behalf of the Citizens Utility Board of Minnesota, MPUC Docket Nos. G008/M-21-138, G004/M-21-235, G002/CI-21-610, G011/CI-21-611, OAH Docket No. 71-2500-37763, (Feb 11, 2022) (“Cebulko Surrebuttal”), p. 13-15, lines 7-2.

¹⁴ Cebulko Direct, p. 65, line 14

¹⁵ Cebulko Direct, p. 47, lines 19-21

¹⁶ Reed Rebuttal, pp. 8-9, lines 20-9

1 A15. I do not. Witness Reed’s concerns are misapplied, given that, as stated, the
2 utilities did not adequately react to *actual market conditions* – not the “remote” risk that
3 such conditions might theoretically occur – of substantially inflated prices when planning
4 for the long weekend and unprecedented prices when planning for February 17. No utility
5 has argued that they projected prices to fall over the long weekend, so the explanations
6 offered by utilities have to be applied to what was expected at that time—even a constant
7 price of \$15/Dth would have been a significant price event. Second, like other witnesses,
8 Witness Reed appears to be mischaracterizing my position as advocating for eliminating
9 price risk “at any cost,” when I explicitly rejected this simplistic way of thinking in
10 Direct. I instead argued:

11 It would not be reasonable to expect utility managers to focus exclusively
12 on minimizing costs, as such decisions may be unreasonably risky; it
13 would also not be reasonable to focus exclusively on minimizing risk, as
14 the least-risk option may be the costliest. Rather, utility managers must
15 strike an appropriate balance between the simultaneous obligations to
16 minimize risk and cost to ensure that rates are just and reasonable.¹⁷
17

18 I detail additional issues regarding risk in Section III.B., below.

19 **Q16. Did the utilities raise any additional concerns regarding hindsight?**

20 A16. Yes. Some utility witnesses claimed, incorrectly, that CUB’s recommended cost
21 disallowances for load forecasting and storage utilization incorporate an inappropriate
22 hindsight bias. CUB Witness Cebulko addresses these arguments in his surrebuttal
23 testimony.

24 **Q17. Does CUB’s analysis, in Direct or in Surrebuttal, incorporate a hindsight**
25 **bias?**

¹⁷ Nelson Direct, p. 22, lines 12-17

1 A17. No. The analyses provided by Witness Cebulko and myself focus only on whether
2 he utilities exercised due care given what was known and knowable at the time of their
3 actions.

4 B. Risk

5 **Q18. Have the utilities raised any additional concerns regarding prudent risk**
6 **management?**

7 A18. Yes. According to CenterPoint Witness Reed:

8 CUB Witness Nelson states that “A reasonable utility would exercise due
9 care to balance both risk and cost and operate under a regulatory
10 framework that shares risk reasonably between ratepayers and
11 shareholders.” Certainly, utilities do exercise such care, but utilities do not
12 generally operate under a “risk sharing” ratemaking framework...In
13 leading prudence cases, the risk sharing concept has been proposed and
14 rejected on grounds that it is not consistent with established regulatory
15 principles.¹⁸

16 **Q19. Do the concerns raised by Witness Reed apply to your testimony or to the**
17 **current case?**

18 A19. No. These arguments appear to be baseless and carefully articulated to be a
19 general statement rather than a critique of my testimony. Witness Reed’s quotation of my
20 testimony, cited above, refers to the broad and established regulatory context in which a
21 utility operates. The quotation from my testimony does not refer to a specific risk-sharing
22 framework or methodology used for a disallowance calculation nor does it refer to our
23 findings in the current case, as our recommended disallowances are based on established
24 regulatory principles and prudence – which the MPUC has explicitly tied to “protect[ing]

¹⁸ Reed Rebuttal, pp. 6-7, lines 14-2

1 ratepayers from unreasonable risks” in its order opening the current review¹⁹ – not a
2 specific risk-sharing mechanism. And, in fact, a careful reading of Witness Reed’s
3 testimony demonstrates he is not explicitly suggesting that I am using a risk sharing
4 framework, only that if I hypothetically had, it would be inappropriate—which is an
5 irrelevant observation because I did not. The “leading prudence cases” cited by Witness
6 Reed do not apply to the current case for similar reasons. For instance, the article cited by
7 Witness Reed summarizes the *Wolf Creek* decision which “disallowed approximately
8 \$257 million of the Wolf Creek Nuclear Plant’s cost (8.85% of the total cost) that it
9 considered to have been imprudent, and disallowed \$411 million (14.2% of the total cost)
10 that it considered to be ‘uneconomic,’ based on a risk-sharing methodology.”²⁰ Given
11 that CUB’s disallowance recommendations are based on imprudence and established
12 regulatory principles as described in Q11, *not* risk-sharing – as no such (or alternative)
13 risk-sharing methodology exists – the *Wolf Creek* decision does not apply to this case.
14 Other decisions referenced in the cited article also appear to refer to methodologies that
15 do not exist in the current case.²¹ If one of the referenced decisions applies to the current
16 case, Witness Reed has not identified which decision, nor has he explained its
17 application.

18 Additionally, Witness Reed’s *Wolf Creek* citation refers mostly, if not entirely, to
19 cases that were applying the used and useful standard to capital investments. This case

¹⁹ “Order Granting Variances Authorizing Modified Cost Recovery Subject to Prudence Review and Notice of and Order for Hearing,” Docket No. G-999/CI-21-135 In the Matter of a Commission Investigation into the Impact of Severe Weather in February 2021 on Impacted Minnesota Natural Gas Utilities and Customers, Minnesota Public Utilities Commission (August 30, 2021)

²⁰ Jonathan Lesser, “The Used and Useful Test: Implications for a Restructured Electric Industry,” *Energy Law Journal*, Vol. 23 (2002), p. 369

²¹ *Id.*, p. 359 et seq.

1 differs because we are discussing gas supply costs that are collected through a regulatory
2 mechanism that directly passes these costs to ratepayers. For this additional reason, the
3 application of this reference, including any application of the concept of risk, is not
4 reasonable.

5 **Q20. Do you agree with Witness Reed that you attempted “to expand or modify**
6 **the prudence standard” with your discussion of risk?²²**

7 A20. No. Although I am not an attorney, I am familiar with a recent publication co-
8 written by a Professor and Director of the Institute of Public Utilities at Michigan State
9 University titled “Risk Principles for Public Utility Regulators.” Many excerpts from this
10 book reject Witness Reed’s notion that a discussion of risk is not directly related to
11 prudence. Some examples include:

12 Principle 20. Economic regulation of public utilities centers on a social
13 compact that establishes *regulatory risk and a framework for risk*
14 *allocation*. . . . Given the essential nature of public utilities, an accepted
15 construct known as the social or *regulatory “compact” establishes a system*
16 *of risk allocation to serve the public interest* in terms of both efficiency and
17 equity. . . . Reasonably allocated risk under the regulatory compact provides
18 public utilities a path to profitability as well as essential performance
19 incentives. . . . In theory and practice, regulatory risk suggests that
20 regulators have considerable power and discretion to choose how much risk
21 utilities must bear and when to compensate investors in order to “keep them
22 whole” in the face of risk. Because *regulators decide how risk is shared*,
23 both investors and ratepayers bear regulatory risk. . . . Regulation generally
24 provides a means of cost recovery for prudent and necessary or mandated
25 investments and expenditures. But *regulation should not shield utilities*
26 *from business risks related to operational performance . . . (emphasis*
27 *added).*²³

28 . . .
29
30

²² Reed Rebuttal, pp. 6-7, lines 11-2

²³ At 66-68.

1 Principle 25. Prudence reviews maintain regulatory risk with regard to
2 utility investments and expenditures. In regulation, the concept of *prudence*
3 *relates directly to risk. Prudence is frequently judged in risk-management*
4 *terms*, as the prudence test centers on whether utility managers make good
5 decisions based on what is “known and knowable” at the time, that is, with
6 due diligence. . . . Prudence is an especially pertinent regulatory standard
7 with regard to risk and risk allocation. Prudence calls for anticipating and
8 managing risk with regard to investments and expenditures (*emphasis*
9 *added*).²⁴
10

11 Finally, it is worth repeating that in the order opening the current prudence
12 review, the MPUC stated, “utilities are expected to act prudently to protect ratepayers
13 from unreasonable risks.”²⁵ Thus, the MPUC has directly tied the concepts of prudence
14 and reasonable risk management in the current proceeding.

15 As demonstrated by the above excerpts and the opening PUC order, Witness
16 Reed’s critique is, at best, overly vague and non-descript, and, at worst, completely
17 misses the mark. Consideration of risk is clearly an integral aspect of prudence reviews.

18 **Q21. Did Witness Reed raise any additional concerns?**

19 A21. Yes. According to Witness Reed:

20 Witness Nelson further opined that the Commission should take a “holistic
21 view” of the utility’s actions, and that the “confluence of multiple
22 decisions may shift risk or cost to ratepayers to a degree that, when taken
23 together, strikes an unreasonable balance between risk and cost or reflects
24 insufficient or unreasonable planning – even if no single action does so on
25 its own.” I interpret this as supporting a view that even if each individual
26 decision was prudent, the totality of the decisions may still not be prudent
27 and therefore may not warrant full cost recovery.²⁶

²⁴ At 82-83.

²⁵ “Order Granting Variances Authorizing Modified Cost Recovery Subject to Prudence Review and Notice of and Order for Hearing”

²⁶ Reed Rebuttal, p. 7, lines 2-9

1 **Q22. Can you explain the comment cited by Reed?**

2 A22. Yes. My comment was intended to highlight the complexity and
3 interconnectedness of utility decision-making. However, I agree that for the purpose of
4 cost recovery or disallowances, the focus of a prudence review is on specific decisions –
5 not a vague “totality of decisions” in which no specific decision can be identified as
6 unreasonable.

7 **Q23. Does this point apply to the current case?**

8 A23. No. In the current case, CUB found numerous, distinct decisions in which the
9 utilities have made imprudent decisions based on the record provided. Our recommended
10 cost disallowances are thus based on specific, identifiable decisions – not an
11 unidentifiable whole that is greater than or unequal to the sum of its parts.

12 C. Transparency

13 **Q24. Do you have any general observations regarding the level of transparency**
14 **provided by the utilities during this proceeding?**

15 A24. Yes. It is my impression that the utilities’ strategy appears to have been to provide
16 limited information in Direct, and to then provide a more thorough explanation in
17 Rebuttal. This strategy allows the utility to only expose information related to
18 intervenors’ arguments as opposed to all information required to demonstrate prudence,
19 giving me reason to question the comprehensiveness of the utilities’ case. Examples of
20 this approach are numerous: economic interruption and load forecasting errors were key
21 issues in this case, but the utilities largely ignored them in Direct. As demonstrated by
22 CUB Witness Cebulko in surrebuttal, reserve margins were another key issue, but MERC

1 advertised a “minimal” reserve margin of <2 percent in Direct before increasing its
2 margin to over 10 percent in Rebuttal, while also revising its load forecasts. As Witness
3 Cebulko also demonstrates, Xcel neglected to explain its safety concerns regarding its
4 propane facilities in Direct. Utilities are not ignorant to the importance of each of these
5 topics, so omitting them appears to have been strategic. Such a strategy should concern
6 the Commission as it clearly undermines transparency and brings into question the
7 utilities' motivations for omitting key information from direct testimony. This strategy
8 also limits intervenors' ability to analyze key issues that the utilities chose to omit and
9 reduces our opportunity to respond to their claims.

10 **Q25. Has the Commission previously ruled that transparency into decision-**
11 **making processes is necessary to demonstrate prudence?**

12 A25. Yes. The burden of proof is on the utility to demonstrate prudence,²⁷ and the
13 MPUC has previously ruled that demonstrating prudence requires transparency into
14 decision-making processes. In a 2015 determination of imprudence, the MPUC ruled:
15 “[t]he evidence shows what the Company did; however, it does not explain any
16 alternatives available as decisions were made...[the utility’s] evidence thus lacks the
17 transparency necessary to quantify the prudence of final costs.”²⁸

18 **D. Other Issues**

19 **Q26. What issues did Witness Honorable raise in Rebuttal?**

²⁷ Minn. Stat. § 216B.16, subd. 4

²⁸ “Order Finding Imprudence, Denying Return on Cost Overruns, and Establishing LCM/EPU Allocation for Ratemaking Purposes”

1 A26. Witness Honorable made the following claims in regard to DOC Witness King
2 and CUB Witness Cebulko’s direct testimonies:

3 [I]t is not clear to me that Witnesses King and Cebulko have fully
4 addressed the fact that a range of utility decisions taken in response to
5 specific circumstances may be prudent or that they have limited their
6 analyses to information that was known or reasonably should have been
7 known to the utilities at the time those decisions were made. In addition,
8 Witnesses King and Cebulko may not have fully taken into account the
9 context in which the utilities were operating when evaluating the prudence
10 of the Joint Gas Utilities’ gas supply decisions.²⁹
11

12 Additionally, Witness Honorable stated, “I am unaware of any cases in which regulators
13 have found that costs incurred by utilities to obtain energy supplies used by the utilities’
14 customers during an extreme weather event such as the February Event are imprudent.”³⁰

15 **Q27. Let’s consider each of these arguments in turn. Do you agree that “a range of**
16 **utility decisions taken in response to specific circumstances may be prudent?”**

17 A27. Yes. I agree that the utilities had a wide range of available options to more
18 reasonably balance cost and risk – a fact reflected by the range of disallowance options
19 recommended by CUB Witness Cebulko. In some cases, however – such as the decision
20 to not curtail all interruptible customers – the actions of some utilities did not fall within
21 the range of options that could be considered reasonable. I discuss the issue of
22 curtailments further in Section V, below.

²⁹ Rebuttal Testimony of Colette D. Honorable on Behalf of Joint Gas Utilities, MPUC Docket Nos. G008/M-21-138, G004/M-21-235, G002/CI-21-610, G011/CI-21-611, OAH Docket No. 71-2500-37763, (Jan 21, 2022) (“Honorable Rebuttal”), p. 4, lines 8-15

³⁰ *Id.*, p. 4, lines 18-21

1 **Q28. Did CUB’s analysis take “into account the context in which the utilities were**
2 **operating when evaluating the prudence of the Joint Gas Utilities’ gas supply**
3 **decisions?”**

4 A28. Yes. We based our disallowance recommendations on the exact same supply
5 reserve margins utilized by the utilities and provided conservative allowances for
6 forecasting errors, on top of these reserve margins. In addition, although there is no doubt
7 that the utilities were operating under challenging conditions during the Event, we do not
8 believe that such conditions justify the imprudent behavior demonstrated on the record.

9 **Q29. What is the significance of the fact that there may not be “any cases in which**
10 **regulators have found that costs incurred by utilities to obtain energy supplies used**
11 **by the utilities’ customers during an extreme weather event such as the February**
12 **Event are imprudent?”**

13 A29. This statement has no significance in the current proceeding. First, given that the
14 Commission can only rule on the facts of the cases before it, decisions made in other
15 jurisdictions are not relevant. Although there are commonalities across jurisdictions, the
16 facts of what occurred in Minnesota are unique to the utilities in Minnesota. Indeed, even
17 the Minnesota utilities are differently situated and should be evaluated on an individual
18 basis.

19 Finally, as extreme weather events are an emerging problem, it is not surprising
20 that there are not yet instances of cost disallowances for a relatively recent phenomenon.
21 As extreme weather events are expected to become more common, it will be increasingly

1 important for the Commission to protect ratepayers from bearing the costs of imprudently
2 incurred expenses during these potentially costly events.

3 **Q30. Did Witness Honorable find that the utilities' actions were prudent?**

4 A30. No. Witness Honorable has twice declined to testify that the utilities acted
5 prudently in this case.

6 **Q31. Would you like to comment on any of the other points raised by the utilities?**

7 A31. Yes. Some utility witnesses have criticized the fact that intervenors arrived at
8 different cost disallowance recommendations.³¹ The suggestion appears to be that,
9 because intervenors arrived at different figures, the Commission's task of quantifying the
10 prudence of final costs involves too much gray area. If the utilities are intending to make
11 this argument, it should be soundly rejected.

12 **Q32. Why should this argument be rejected?**

13 A32. The implication of this argument is that the burden of proof should be reversed
14 such that it is placed on intervenors rather than utilities. However, there are a variety of
15 reasons intervenors may reach different conclusions. One reason, as demonstrated in
16 Witness Cebulko's testimony, is that there can be a range of reasonable actions the
17 utilities could have taken, and reasonable people may disagree what falls within that
18 range. It is not surprising that sometimes intervenors will arrive at different conclusions.
19 Difference in cost disallowances is not evidence that utilities have behaved prudently.
20 Also, though Witness Cebulko's and my numeric disallowance recommendations differ

³¹ For example, see: Reed Rebuttal, p. 17, lines 9-10; Eidukas Rebuttal, p. 4, lines 20-21

1 somewhat from the numeric disallowance recommendations of the Department's
2 witnesses, we and the Department's witnesses have independently identified many of the
3 same issues that warrant disallowances.

4 The MPUC has significant latitude in determining cost disallowances – and faces
5 a challenging task ahead in determining how heavily to penalize utilities for imprudent
6 actions.

IV. Purchase Gas Adjustment Mechanism

7 **Q33. What is the purpose of this section?**

8 A33. The purpose of this section is to respond to the testimony of CenterPoint witness
9 Reed on the incentive structure of the existing purchase gas adjustment (PGA).

10 **Q34. Please summarize your direct testimony on this issue.**

11 A34. Certainly. On Direct, I testified that the current incentive structure of the
12 purchase gas adjustments creates a shifting of risk away from the utilities and onto
13 ratepayers when compared to other forms of cost recovery mechanisms. Because the
14 PGA allows the utility to pass through costs to ratepayers between rate cases, it reduces
15 the utility's incentive to control and manage fuel costs. The reduced incentive to control
16 and manage fuel costs likely impacts utility decision making. The mechanism
17 incentivizes the utility to minimize risk and ensure quick cost recovery, which is unlikely
18 to result in a reasonable balance of risk and cost for the ratepayer. I then discussed
19 various approaches regulators have taken to address the perverse economic incentives.

1 **Q35. Did CenterPoint agree with your observations about the PGA mechanism on**
2 **Rebuttal?**

3 A35. No. CenterPoint Witness Reed strongly disagrees that the PGA mechanism
4 incentivizes the utilities to engage in a least-risk manner.³² Reed testifies that, although
5 there are PGA mechanisms that include cost sharing structures and other incentive
6 mechanisms, the structure of the PGA mechanism in Minnesota is by far the most
7 common type of gas cost recovery mechanism, and in Witness Reed’s opinion, is very
8 effective at minimizing the costs for customers. Witness Reed appears to define cost
9 minimization as “ensur[ing] that customers never pay more than the actual cost of gas
10 used to serve them, and that these costs meet the prudence standard for being
11 reasonable.”³³

12 **Q36. Witness Reed testifies that the structure of the PGA mechanism in Minnesota**
13 **is the most widely used in the industry. Does that assuage your concerns?**

14 A36. No. The current form of the PGA being the most widely used mechanism does not
15 address my underlying concern about the economic incentives created.³⁴ Indeed, Witness
16 Reed testifies that there are a variety of PGA mechanisms that try to address the very
17 incentive structure that we are discussing. Witness Reed appropriately recognizes that I
18 am not proposing an alternative to the current PGA mechanism. This is not the forum for
19 having the depth of discussion that is necessary before the Commission. In these

³² Reed Rebuttal, p. 13, lines 10-14.

³³ Reed Rebuttal, p. 14, lines 5-7.

³⁴ Beecher and Kihm (2016) at 60 state, “due to the expansive use of various adjustment mechanisms (such as the PGA in this case) between rate cases, ratepayers may be more likely to absorb risks associated with cost and revenue variability”

1 proceedings, I am merely demonstrating that the economic incentives under which the
2 utilities operate is important and should be considered when evaluating their decision
3 making.

4 **Q37. Witness Reed also testifies that “[t]he record also shows that CenterPoint**
5 **Energy had no conflicting objectives that created any misalignment between its**
6 **interests and those of its customers.”³⁵ Do you agree with Reed’s assertions?**

7 A37. No. The record and facts of the case demonstrate the opposite in multiple
8 instances. First, in Witness Olsen’s Rebuttal testimony, Olsen proposes criteria for
9 economic curtailment. I will address that issue more fully later in my testimony, but I
10 offer this observation now: If CenterPoint’s incentives were aligned with customers, why
11 didn’t CenterPoint propose these criteria after the 2013 Polar Vortex, the pipeline
12 explosion in 2014, or the winter event in 2019? CenterPoint did not propose these
13 criteria until intervenors suggested \$10s of millions in cost recovery disallowances.

14 Second, as just noted, Reed testifies that there are other jurisdictions attempting to
15 address the incentive structure of a passthrough PGA mechanism, but the gas utilities in
16 Minnesota have not provided any proposal to address the perverse incentives that
17 currently exist within the PGA. If the utilities economic incentives were aligned with its
18 customers, they would propose an alternative PGA. But the Company has not made such
19 a proposal because they benefit from the current PGA structure. A clear example of the
20 misalignment of the PGA was provided by CenterPoint Energy’s CEO during a quarterly
21 earnings call. When discussing the impact of the Event on Witness Reed stated, “Because

³⁵ Reed Rebuttal, p. 15, lines 9-12.

1 the higher natural gas costs are pass-through costs for our business, they did not impact
2 this quarter's results" and "We are off to a great start for the year, so let's check the utility
3 earnings box as being on track."³⁶ CenterPoint's own CEO highlights the perverse
4 economic incentives with the PGA to their investors as a positive characteristic of the
5 regulatory framework. Given the financial impact to CenterPoint's customers and none of
6 them likely considering the Event a "great start for the year," I would be hard pressed to
7 find a clearer indicator of misaligned economic incentives.

8 The third example is unique to CenterPoint in these proceedings as far as I am
9 aware. In his rebuttal testimony, Witness Ryan introduced evidence of CenterPoint's
10 efforts to "monitor FERC proceedings and litigation around gas costs during the February
11 Market Event." He notes "other than a series of suits brought by one Texas utility against
12 its suppliers, a number of which have now been dismissed, the Company is not aware of
13 any lawsuits by gas utilities alleging market manipulation, price gouging, or similar legal
14 claims."³⁷ Witness Ryan does not identify the parties to the lawsuit he references.

15 However, it seems likely that Ryan is referring to widely-publicized lawsuits that Texas
16 Utility, CPS Energy, brought against numerous gas suppliers, including Energy Transfer,
17 LP. Witness Ryan fails to mention that CenterPoint Energy, Inc. (and/or one of its
18 subsidiaries) recently announced, via a press release, that it had obtained a substantial
19 financial interest in Energy Transfer, LP. through a merger involving a CenterPoint

³⁶ See CenterPoint Energy Inc Q1 2021 Earnings Call Transcript. Available at: <https://www.fool.com/earnings/call-transcripts/2021/05/06/centerpoint-energy-inc-cnp-q1-2021-earnings-call-t/>

³⁷ Ryan Rebuttal, p. 23.

1 affiliate and Energy Transfer.³⁸ While I don't claim to fully understand the details of this
2 merger or CenterPoint's interest in Energy Transfer, it is inappropriate for Witness Ryan
3 to not disclose it when introducing evidence on CenterPoint's efforts to "monitor FERC
4 proceedings and litigation around gas costs during the February Market Event." This
5 creates a conflict of interest – or, at the very least, a strong perception of a conflict of
6 interest – that impacts CenterPoint's efforts to meaningfully monitor relevant regulatory
7 proceedings and lawsuits in a way that benefits CenterPoint's Minnesota customers.
8 Additionally, Mr. Reed claims that "The record also shows that CenterPoint Energy had
9 no conflicting priorities or objectives that created any misalignment between its interests
10 and those of its customers." Either Mr. Reed is unaware of the Energy Transfer merger or
11 needs to explain why having interest in a company that profits from prices spikes is not a
12 conflicting priority or objective with delivering just and reasonable rates to CenterPoint's
13 customers.³⁹ If CenterPoint is now in the position of having a financial interest in a
14 company that profited substantially off these price spikes while simultaneously passing
15 through its extraordinary gas costs to customers through the PGA, that is a clear
16 demonstration of the misalignment of incentives.⁴⁰

³⁸ E.g., <https://investors.centerpointenergy.com/news-releases/news-release-details/centerpoint-energy-begins-exit-midstream-following-energy>

³⁹ While Witness Reed testifies on the economic incentives present within the PGA, he is silent on the Energy Transfer merger.

⁴⁰ While CenterPoint Minnesota may not have purchased gas directly from Energy Transfer LP, the ownership of a mid-stream company that profits off price spikes still presents a conflict of interest. Having a subsidiary that profits when CenterPoint Minnesota customers are harmed by high prices is a misaligned incentive. Furthermore, because Energy Transfer LP profits off of price spikes, CenterPoint Energy Minnesota may have a reduced incentive to make operational decisions to mitigate price spikes as well as making regulatory changes that mitigate price spikes, such as proposing an alternative PGA mechanism.

V. Curtailement

1 **Q38. What is the purpose of this section?**

2 A38. In this section I will respond to the rebuttal testimony of CenterPoint witness
3 Olsen and Reed, Xcel witness Levine, and MERC witness Eidukas, and their arguments
4 related to interruptible load. It is important to note that we do not recommend an
5 interruptible load related disallowance for Xcel, but I address all three utilities throughout
6 because Xcel did not explicitly support the notion of economic interruption.

7 **Q39. Please summarize your direct testimony on this issue.**

8 A39. Certainly. Given what the utilities knew at the time they made their supply plans
9 on February 12 and 16, CenterPoint and MERC should have curtailed all of their
10 interruptible customers to mitigate cost and reliability risk. As explained in Witness
11 Cebulko’s Direct and Surrebuttal testimonies, by February 11, the utilities knew that
12 natural gas prices were in the 98th percentile over the last five years, that the worst of the
13 storm had yet to occur, that pipelines had issued warnings which suggested that the
14 market was tightening and there could be supply cuts. Going into a four-day gas buying
15 period where there is very little liquidity in the trading market with such uncertainty, a
16 reasonable utility would have mitigated its risk of supply cuts and exposure to the high
17 price of natural gas by curtailing interruptible customers. Interruptible load is a resource
18 that has already been paid for by customers, has a known price, has been utilized by the
19 utilities in multiple instances so a reasonable estimate of the level of compliance with a
20 curtailment call can be made, and therefore should have been utilized starting February
21 12th.

1 By February 16, the utilities knew there had been significant freeze-offs in Texas
2 and Oklahoma, and prices had moved from historically high to unprecedented. The
3 decision not to curtail interruptible load after the long weekend demonstrated not only
4 imprudence but callous disregard for the costs imposed upon customers.

5 E. High-level Response to Utilities

6 **Q40. Before we go into the utilities' specific rebuttal arguments regarding**
7 **curtailment, did you notice a common theme that emerged in rebuttal testimony**
8 **that was not present in the utilities' direct testimony? If so, how does this impact**
9 **your analysis?**

10 A40. Yes. As my colleague Witness Cebulko discusses, the Companies have shifted
11 their focus to the uncertainty of their planning environment as they made supply
12 procurement decisions on February 12 and 16. This narrative shift towards a focus on
13 supply uncertainty and reliability supports Witness Cebulko's and my direct testimony.
14 The utilities were clearly concerned that portions of their supply could be cut throughout
15 the Event. As demonstrated in Witness Cebulko's direct and surrebuttal testimony, the
16 utilities' traders understood that gas prices were in the 98th percentile, were predicting
17 significant increases in the price of natural gas over the four-day weekend, understood
18 that pipelines had issued warnings of possible supply cuts, and understood that there were
19 wellhead freeze offs in Texas and Oklahoma. Given the uncertainty of the situation,
20 curtailing all interruptible customers and reducing the Companies demand for natural gas
21 is a reasonable operational decision that the utilities should have utilized to mitigate risk
22 for both the utility itself and its ratepayers.

1 **Q41. At a high-level, what are the primary issues with the utilities not curtailing**
2 **interruptible load for economic reasons?**

3 A41. The primary issues with the utilities not curtailing interruptible load for economic
4 reasons is that it defies basic logic and disregards the utilities’ operational authority to
5 economically interrupt customers when supplying gas for these customers becomes
6 imprudent.

7 By claiming that the utilities should only curtail interruptible load for reliability
8 purposes, the utilities are attempting to absolve themselves of accountability for not using
9 their authority to economically curtail interruptible customers.⁴¹ The argument that
10 curtailment should only occur for reliability reasons implicitly assumes that prices can
11 reach infinity dollars per dekatherm without ever triggering an economic interruption.
12 Because the utilities have authority to economically interrupt, there is some threshold
13 price at which economic curtailment becomes reasonable for interruptible customers—
14 not an infinitely high price.⁴² This is basic logic—no authority to economically interrupt
15 would exist if the threshold was infinitely high. The position that curtailment should only
16 be reliability related, while having the authority to economically curtail interruptible
17 customers, defies basic logic, is unreasonable, and imprudent.

⁴¹ CenterPoint and Xcel confirmed that they have authority to economically curtail. MERC’s interruptible tariff unambiguously indicates that interruption can occur at any time for any reason determined reasonable be the Company. MERC’s interruptible tariff states, ““Customers under this rate schedule are subject to interruption at any time upon order of MERC.” MERC Tariff No. 8.40a states, “Company will make every reasonable attempt to maintain continuous gas service to firm service customers. *Interruptible customers are subject to curtailment.*” MERC tariff No. 8.41 “Standard Order of Curtailment: *When in the opinion of the Company it becomes necessary to curtail or interrupt service to any of the Company’s customers, such service shall be interrupted in the following order*” (Emphasis added)

⁴² The purpose of this testimony is not to create economic criteria for curtailment. A threshold price would be informed by other indicators, such as those discussed in Witness Olson’s Rebuttal Testimony on pages 11 to 12.

1 Because the utilities have the authority to economically curtail, they have the
2 responsibility to do so prudently. The utilities have argued that because they have not
3 economically curtailed before that they could not during the February Event. The utilities
4 have also argued that they did not “have established criteria for price-based curtailments .
5 . . a necessary precondition to effectuating price-based curtailments.”⁴³ These are excuses
6 for not acting in public interest. These are excuses for not being prepared and acting on
7 the authority they clearly have. Just because a utility has not previously economically
8 interrupted is not a sufficient explanation for inaction during an unprecedented event. If
9 the utilities needed economic criteria to justify curtailment -- which no regulation
10 indicates and so is clearly not required -- they should have developed them contingent
11 with the approval of the interruptible tariff that gave them the authority to interrupt, not
12 after stakeholders recommend a cost disallowance for imprudent decision making. By
13 refusing to exercise their authority to economically curtail interruptible customers, the
14 utilities did not realize all the potential benefits that interruptible load could create for
15 ratepayers, which resulted in unreasonable and imprudent gas procurement costs.

16 Finally, the just and reasonable rate standard applies to all decisions made by a
17 utility, including the decision not to act. The utilities are suggesting that it is reasonable
18 to provide interruptible customers a rate discount for the authority economically interrupt,
19 yet to never actually do so in practice—clearly an unreasonable approach. Prices reached
20 unprecedented levels and the utilities, quite literally, did not consider price as an issue.

21 After the weekend, witnesses for the utilities claim that nothing changed but the price

⁴³ Olson Rebuttal, p.11, lines 18-19.

1 from Friday to Tuesday.⁴⁴ Nothing changed for the utilities. This is because according to
2 CenterPoint’s CEO “the higher natural gas costs are pass-through costs for our business,
3 they did not impact this quarter’s (financial) results ... We are off to a great start for the
4 year”⁴⁵ Utility decision making did not change because the utilities did not consider
5 the financial impact to its customers, which is unreasonable and imprudent.

6 F. Response to MERC

7 **Q42. Moving to individual utility responses. Let’s start with MERC. Please**
8 **summarize witness Eidukas’ rebuttal testimony on this issue.**

9 A42. Consistent with his direct testimony, Witness Eidukas testifies that “MERC’s
10 tariffs do not provide for price-based curtailment and such action is contrary to the
11 approved interruptible rate structure.”⁴⁶ Witness Eidukas claims that even if MERC were
12 permitted to call price-based curtailments, it could not have anticipated that prices would
13 reach unprecedented levels by the time it would have needed to declare a curtailment by
14 8:00am on Friday, February 12. Witness Eidukas maintains that it still would not have
15 been reasonable for MERC to curtail any of its customers on February 16 “even after the
16 magnitude of prices over the four-day weekend were known.”⁴⁷ Eidukas testifies that the
17 act of curtailing customers without a reliability threat would have been outside of
18 standard industry practice and inconsistent with MERC’s planning and past operations.

⁴⁴ Reed Rebuttal, p. 42 states “The only difference between the circumstances on Tuesday compared to the circumstances on Friday, is that the extraordinary past prices from over the weekend were known.” Eidukas Rebuttal p. 26-27.

⁴⁵ May 6, 2021, CenterPoint’s Quarterly Earnings Call. Available at: <https://www.fool.com/earnings/call-transcripts/2021/05/06/centerpoint-energy-inc-cnp-q1-2021-earnings-call-t/>

⁴⁶ Eidukas Rebuttal, p.25, lines 4-5.

⁴⁷ Eidukas Rebuttal, p.26, lines 3-4.

1 **Q43. Do you and Witness Cebulko expect that MERC and the other utilities**
2 **should have anticipated unprecedented prices on February 12 when the utilities**
3 **developed their supply plans for the four-day weekend, as witness Eidukas testifies?**

4 A43. No. Witness Cebulko and I have been clear throughout our testimonies. We do
5 not expect the utilities to have anticipated unprecedented prices. We are saying that the
6 utilities should have recognized their planning environment for what it was at the time
7 they made their decisions. Prices were in the 98th percentile, well head freeze offs were
8 beginning to occur, pipelines were issuing warnings, and the Company was planning its
9 gas supply for a four-day period in which the worst of the storm had yet to occur.

10 According to witness Mead’s testimony, the Company had significant uncertainty going
11 into the weekend.⁴⁸ A reasonable utility would have recognized the uncertainty of the
12 situation, expected that prices would continue to increase, and curtailed its interruptible
13 customers.

14 **Q44. What was the planning environment on February 16 when MERC developed**
15 **its gas supply plan for February 17?**

16 A44. By February 16, MERC knew that unprecedented prices were occurring.
17 Moreover, witnesses Mead and Sexton testified that significant uncertainty regarding the
18 gas supply remained and that the Company was concerned about the risk of supply cuts.⁴⁹
19 I do not know how MERC defines a “supply condition,” because it is undefined in the

⁴⁸ Mead Rebuttal, p. 6-7, lines 6-17.

⁴⁹ Mead Rebuttal, p. 7, lines 14-17. Sexton Rebuttal,

1 tariff, but based on what the Company knew at the time, a reasonable utility would have
2 examined its planning environment and curtailed its interruptible customers.

3 **Q45. Let’s discuss the definition of “supply conditions.” Witness Eidukas testifies**
4 **that Witness Cebulko’s assertion that the term “supply conditions” could**
5 **reasonably be interpreted to include pricing is false. Do you agree?**

6 A45. No, I agree with my colleague, Witness Cebulko, that supply conditions could
7 reasonably be interpreted to include pricing. The problem with Witness Ediukas’ critique
8 is that MERC does not define the term “supply conditions” in its tariff, and thus there are
9 numerous instances or situations that could arguably be covered under this term. I believe
10 that based on the cost of gas on February 12 and 16, and the significant uncertainty of
11 potential supply cuts, a reasonable utility would have concluded those conditions met a
12 reasonable interpretation of “supply conditions.”

13 Moreover, I find it ironic that Witness Eidukas argues that MERC could not
14 curtail for economic purposes because the Company’s tariff does not contain established
15 criteria for economic curtailments.⁵⁰ Witness Eidukas ignores the fact that the tariff also
16 does not specify criteria for reliability curtailments, yet the Company has issued
17 curtailments for this purpose.

⁵⁰ Eidukas Rebuttal, p. 29, lines 26-29, stating “there is no term or condition that would specify the price at which such curtailments would occur or the frequency or length of economic curtailments to which interruptible customer would be subject.”

1 **Q46. Witness Eidukas also claims that Witness Cebulko’s testimony detailed the**
2 **steps that the Company took to inquire if it could curtail for economic purposes. Do**
3 **you agree?**

4 A46. No. In fact, Witness Cebulko highlights how little effort the Company put into
5 investigating if they could curtail for economic purposes. Witness Cebulko’s testimony
6 describes the following events.

- 7 • A MERC employee emailed colleagues asking, “... is it smart to curtail for
8 economic reasons? I think the customer pays what we pay...but it is killing us on
9 costs,”
- 10 • Witness Sarah Mead responded that their interpretation is that the Company could
11 not curtail unless there is a pipeline issue but “regulatory” should weigh in.

12 Witness Cebulko then testifies that the utility provided no evidence that there was any
13 follow-up from anyone else at MERC, other than assurances from witness Mead that the
14 costs of the Event would be recoverable from customers. As opposed to interpreting these
15 as detailed steps as Witness Eidukas claims, I interpret this as MERC’s employee
16 questioning management’s decision to not interrupt and getting no tangible response from
17 said management.

18 **Q47. Is there an industry standard for curtailing interruptible customers to avoid**
19 **high prices?**

20 A47. To the best of my knowledge, no. Witness Reed testifies that “there is no industry
21 standard that interruptible sales customers should be curtailed if higher cost purchases

1 could be avoided.”⁵¹ Reed testifies that most tariffs do not address curtailment for
2 economic purposes. Although there are examples of the inclusion of price-based
3 curtailment in an interruptible tariff such as the Consumers Energy Tariff, which
4 explicitly allows for curtailment of gas service if “reliable short term supplies are not
5 available at reasonable and prudent prices.”⁵²

6 However, what Witness Reed does not discuss and is the issue at hand here –
7 utilities must always procure reasonable and prudently priced gas. The utilities did not
8 procure prudently priced gas in this instance because they supplied their interruptible
9 customers with extremely high priced gas under extreme supply uncertainty.

10 **Q48. Will you please remind us: do the utilities’ tariffs prohibit economic**
11 **considerations as the basis for curtailments?**

12 A48. Based on my reading of the tariffs, no, they do not prohibit economic
13 consideration.⁵³

14 [G. Response to CenterPoint](#)

15 **Q49. Please summarize CenterPoint’s rebuttal testimony on curtailment.**

16 A49. CenterPoint witnesses Reed and Olsen testify that price-based curtailment would
17 have been inappropriate given the utility could not have anticipated unprecedented prices,
18 curtailing would have required the Company to “abandon all precedent” related to when
19 they curtail customers, the Company had not developed criteria for economic curtailment,

⁵¹ Reed Rebuttal, p. 21, lines 6-15.

⁵² Consumers Energy Company Rate Book for Natural Gas Service, First Revised Sheet No. C-9.00.

⁵³ As I identified in my direct testimony, CenterPoint and Xcel both agree that there are no prohibitions against economic curtailment, rather, they maintain it has not been Company practice. MERC disagrees and believes that its tariff prohibits economic curtailment.

1 and the Commission hadn't indicated that it would support curtailing interruptible
2 customers for economic reasons. Further, Witness Reed states that establishing price-
3 based curtailments would "create a materially different level of service for interruptible
4 sales customers than the one they signed up for."⁵⁴

5 **Q50. Let's take each argument in turn. How do you respond to the argument that**
6 **CenterPoint could not have anticipated unprecedented prices?**

7 A50. As my colleague Witness Cebulko and I repeatedly testify, the utilities should not
8 have been expected to anticipate ~\$200/Dth on February 12. However, CenterPoint
9 certainly knew that gas prices were in the 98th percentile when it created its supply plan
10 on February 12, and the prognostications for the weekend indicated a deteriorating
11 situation. CenterPoint absolutely should have mitigated its reliability and price risk
12 exposure by curtailing all interruptible customers. Furthermore, CenterPoint's defense
13 that the utility could not have anticipated unprecedented prices is invalid when we
14 consider the utility's actions on February 16. On February 16, the Company absolutely
15 knew that the price of natural gas had reached historic highs, but still did not curtail its
16 interruptible customers. Instead, Witness Olsen argues that because the Company was not
17 at risk of having system reliability issues on February 16, and since price-based
18 curtailment was outside the bounds of historic Company action, this was not a valid
19 action.

⁵⁴ Reed Rebuttal, p.22, lines 10-12.

1 **Q51. Is it problematic that the CenterPoint’s position is that it only curtails**
2 **customers for reliability purposes?**

3 A51. I will start by noting that the utilities do not define the term reliability at any
4 point in their testimony or in their tariffs. CenterPoint and Xcel continue to contend that it
5 has not been their practice to call curtailments unless pipeline deliverability is exhausted
6 or if there is a need to support system pressure, regardless of the price of natural gas.⁵⁵

7 As discussed above, by taking the position that they should only interrupt for
8 reliability, CenterPoint is implicitly saying that an infinitely high price is prudent to pass
9 onto ratepayers. Highlighting this implicit assumption clearly demonstrates the utilities’
10 imprudent decision-making. Using basic logic, one can deduce that a threshold for
11 economic interruption exists. The question is how to determine that threshold. I have
12 demonstrated that the conditions on February 12 undoubtably meet this threshold. Given
13 that conditions were unprecedented on the February 16th, it is unimaginable how the
14 threshold could not have been met.

15 It is also important to note that CenterPoint considers the economic impact to the
16 Company when it interrupts customers. In fact, its interruptible prioritization is based on
17 the rate margin collected by the Company. CenterPoint testifies that, when interrupting
18 customers, it interrupts the lowest-margin customers first.⁵⁶ That is, those that provide the
19 least economic benefit to the Company. This demonstrates that, even during emergencies,
20 the Company keeps revenue as the priority for itself. That is not inappropriate, as such

⁵⁵ Olsen Rebuttal, p. 11, lines 1-9.

⁵⁶ Olsen Direct, p. 19-20, lines 22-24. “...CenterPoint Energy would also curtail interruptible customers with the lowest margin, with the largest customers being called upon to curtail first”

1 curtailments should benefit all customers, as well. However, the Company claims it does
2 not consider price when making decisions for its own customers. Clearly this is
3 contradictory, asymmetric, and an indication of misaligned incentives.

4 **Q52. Witness Olsen testifies that there are significant operational barriers to**
5 **price-based curtailments, such as a lack of criteria for making those decisions. How**
6 **do you respond?**

7 A52. After stating that there are significant operational barriers, Witness Olsen then
8 proceeds to lay out the relevant questions the Company must answer to develop the
9 criteria for economic curtailment. Indeed, Olsen identifies pertinent, good questions that
10 the Company must answer. Witness Olsen’s testimony demonstrates that CenterPoint
11 could develop this economic criterion but did not. As I mentioned earlier in my
12 testimony, this is criteria the Company should have developed long ago yet it chose not
13 to.

14 Witness Olsen’s claim that these operational criteria would be a “necessary
15 precondition” may be accurate, but that is not the point. The focus in this prudency
16 review is that CenterPoint had the authority to develop and implement economic
17 curtailment criteria without Commission or stakeholder approval but choose not to.
18 Choosing to not have economic criteria (or some other process) for curtailing
19 interruptible customers is unreasonable and imprudent. This was true before the price
20 spike and is currently true if CenterPoint found itself in a similar situation.

21 Finally, Witness Olson is implying CenterPoint would require Commission
22 approval to economically interrupt customers under a tariff that states that the company

1 can interrupt service at any time for any appropriate reason. If Witness Olson is indeed
2 implying such a requirement, that would be incredibly misleading and clearly false. In
3 fact, the utilities are, in rare form, suggesting that they need the commission to approve
4 and get stakeholder feedback on economic interruption criteria prior to using the
5 authority they have had since the interruptible tariff were created. If the utilities thought
6 this was necessary, they should have asked for this input when the tariff was being
7 proposed in their rate case, not after they acted imprudently.

8 **Q53. CenterPoint questions why you and witness Cebulko did not create**
9 **operational criteria for CenterPoint to execute upon for economic curtailment. Is it**
10 **the intervenor's job to develop this for the Company?**

11 A53. No. In a prudence review is the utility's burden to demonstrate that its actions
12 were in the public interest. CenterPoint is trying to push this burden onto intervenors by
13 arguing that it cannot mitigate price to customers without explicit approval of every detail
14 by the Commission.

15 I agree with Witness Reed's strawman example arguing that it would be
16 inappropriate to curtail all interruptible sales service whenever the incremental revenue
17 from those customers is below the marginal supply cost, and I must reiterate that my
18 colleague and I have not proposed such a solution. I have stated that based on the
19 circumstances known to CenterPoint on February 12 and 16, the Company should have
20 curtailed all its interruptible customers. It is the confluence of events – that prices were in
21 the 98th percentile, that the pipelines were issuing warnings about possible supply cuts,

1 that the worst of the storm had yet to arrive, that the utility had to purchase ratable gas for
2 four days – that unequivocally demonstrate that the utility’s actions were unreasonable.

3 **Q54. Do you agree that establishing price-based curtailments would materially**
4 **impact the level of service for CenterPoint’s interruptible sales customers?**

5 A54. No. This assumes that economic interruption is not implicit within CenterPoint’s
6 interruptible tariff, which, at the Company’s own admission, is untrue.

7 [D. Response to Xcel](#)

8 **Q55. Please summarize Xcel’s rebuttal testimony on curtailment.**

9 A55. Witness Levine testifies that Xcel released interruptible customers on February
10 17 at 6:00 p.m. when it had additional information that it did not have when the
11 Company’s supply plan was set on February 16. Specifically, Xcel understood that the
12 weather was warming, and the Company had sufficient supplies.⁵⁷ Furthermore, Witness
13 Levine argues that Witness Cebulko double counted disallowances for this period of
14 time: once for the Company’s load forecast error and a second time when Xcel released
15 customers on February 17.

16 **Q56. How do respond to Xcel’s rebuttal testimony?**

17 A56. Witness Levine is correct that our initial analysis double counted the
18 disallowance. Once the Company erred in over-procuring supply based on poor load
19 forecasts, it is unnecessary to recommend a second disallowance for the Company
20 allowing customers to use that natural gas. Witness Cebulko revised his disallowance

⁵⁷ Levine Rebuttal, p. 56, lines 12-20.

1 calculation range to reflect only a single disallowance once for the Company's poor load
2 forecast.

3

VI. Conclusion

4 **Q57. Does this conclude your testimony?**

5 **A57. Yes.**