

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: August 7, 2014 ** Agenda Item # 3

Company: CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas
(CenterPoint or the Company)

Docket No. G-008/GR-13-316
In the Matter of the Application of CenterPoint Energy Minnesota Gas for
Authority to Increase Natural Gas Rates in Minnesota

Issues: Should the Commission reconsider and/or clarify its June 9, 2014 *Findings of
Fact, Conclusions, and Order?*

Staff: Dorothy Morrissey 651-201-2232
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Relevant Documents

FINDINGS OF FACT, CONCLUSIONS, AND ORDER June 9, 2014
Department - Petition for Reconsideration and Clarification (Corrected)..... July 1, 2014
CenterPoint Energy - Reply to Petition July 10, 2014

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

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July 17, 2014

Statement of the Issues

Should the Commission reconsider and/or clarify its June 9, 2014 *Findings of Fact, Conclusions, and Order*?

Background

On August 2, 2013, CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas (CenterPoint or the Company) filed this general rate case seeking an annual rate increase of \$44,322,000, or approximately 5%.

On June 9, 2014, the Commission issued its *Findings of Fact, Conclusions, and Order* (June 9, 2014 Order). The Order authorized CenterPoint to increase its rates to allow for an additional \$32,943,000 in annual revenues, or approximately 3.9% per year, based on a rate of return on common equity capital of 9.59%.

On July 1, 2014, the Department of Commerce, Division of Energy Resources, Energy Regulation and Planning Unit (Department or DOC) filed a petition (corrected)¹ for reconsideration and clarification. The Department asked the Commission to reconsider its decision on the discount rate used to determine the ratemaking allowance for qualified pension expense and also requested clarification on the amount of the monthly customer charge for Small Volume Dual Fuel (SVDF) transportation customers.

On July 10, 2014, CenterPoint filed a reply to the Department's petition asking the Commission to deny the Petition for Reconsideration because the Department provided no new argument that merits reconsideration of the June 9, 2014 Order, nor presents any evidence not previously considered. CenterPoint had no objection to the Department's request for clarification on SVDF transportation customer charges.

Minnesota Statutes and Commission Rules

Petitions for reconsideration are subject to Minn. Stat. § 216B.27, and Minn. Rules part 7829.3000. Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty days of the request. If the Commission takes no action on the (Department's petition, the request would be considered denied as of August 29, 2014. The Commission may also take specific action to deny the petition.

If the Commission takes up a party's request for reconsideration, the Commission can: (1) reconsider, and (a) affirm, (b) modify or (c) reverse its initial decision, **or** (2) toll the time period to

¹ The Department timely filed its petition for reconsideration and clarification on June 30, 2014. The Department's July 1, 2014 corrected petition was necessary to correct two items: (1) the inadvertent use of term "MERC", replacing it with correct term "CenterPoint"; and (2) to delete Section III of its June 30, 2014 petition having found that the Commission's June 9, 2014 Order Point 15 had indeed addressed its concern. Given the lack of substantive changes in the Department's corrected petition, CenterPoint did not object to the corrected petition's filing occurring one day following the statutory deadline.

allow additional time for reconsideration, **or** (3) deny the petition for reconsideration and thereby affirm the initial decision. The Commission may also reconsider its Order on its own motion.

See Appendix A to the briefing paper for the full text to Minn. Stat. § 216B.27 and Minn. Rule 7829.3000.

Should the Commission Toll the Time Period to Allow Additional Time for Writing the Order?

Because the Department's requests would be considered denied on August 29, 2014 if not acted on, staff recommends that the Commission deliberate on the merits of the petition and if substantive changes are made to the June 9, 2014 Order, toll the time period to ensure adequate time to write an order.

Party Positions and Staff Analysis

If the Commission grants the Department's request for reconsideration and/or clarification, or on its own motion decides to reconsider and/or clarify its June 9, 2014 Order, then the Commission may want to take up one or more of the following issues.

1. Discount Rate for Qualified Pension Expense Rate Recovery

PUC Staff: Dorothy Morrissey

Issue

Should the Commission reconsider its decision authorizing CenterPoint to use a 5.35 percent discount rate for calculating test year qualified pension expense for rate recovery?

CenterPoint Testimony

The Company requested recovery of qualified pension amounts that were based upon the generally accepted accounting principle (GAAP) approach under Accounting Standard Codification Topic 715-30 Defined Benefit Plans – Pension (ASC 715). Several actuarial assumptions are utilized under this approach, including the selection of a discount rate to determine the present value of its future pension benefit obligations. Applying ASC 715 financial reporting standards, CenterPoint derived a discount rate which reflected the yield of a hypothetical portfolio of high quality bonds available at the measurement date whose cash flows matched the expected benefit payments of the pension plan. Accordingly, CenterPoint calculated a discount rate value of 4.75 percent at which its pension benefit obligations could be settled. CenterPoint stated that, similar to ASC 715, use of high quality bond yields is also generally required when determining the minimum funding of pension plans under ERISA². Upon adhering to ASC 715 and ERISA, the most important actuarial objective is the security of pension benefits already earned, and consequently, discount rates that are closer to settlement rates satisfy this objective. CenterPoint also offered Oregon Public Utility Commission's 2013

² Employee Retirement Income Security Act.

survey results which reported most state commissions use ASC 715 as the basis for deciding the level of recovery associated with pension costs.

Department Testimony

The Department explained that the value of the discount rate has an inverse relationship with the pension cost result, i.e., as the discount rate is lowered, the calculated pension cost increases, while the employees' benefits remain unchanged. The Department was concerned that CenterPoint's proposed 4.75 percent test year discount rate was low, compared to the Company's five year historical average of 5.35 percent (2009-2013), and would result in utility rates that were too high. The Department argued that a discount rate based on ASC 715 is not necessarily reasonable for ratemaking purposes because the Company's selected value: (1) measures current settlement of the Company's pension obligations, which CenterPoint did not demonstrate to be undertaking, (2) is based on a specific point in time, which can lead to significant variation from year to year, thus fails to reflect likely and reasonable pension expense going forward, and (3) does not reflect the expected higher return of the asset portfolio actually held in the Company's pension fund, and therefore, overstates the amount needed in the test year to meet its pension obligation.

The Department stated that under ASC 715, there is an inherent bias built into pension expense caused by the use of discount rates different from the expected rate of return on plan assets (EROA), even though these two rates cover the same time period. The Department indicated that the ratemaking goal is to ensure that the costs included in the utility's rates charged to ratepayers are reasonable so that CenterPoint can be expected to have enough money available in the future to be able to pay its pension obligation. Accounting standards do not dictate how ratemaking decision should be made by the Commission. Pension expense under ASC 715 is updated annually for financial reporting, whereas pension expense for ratemaking purposes remains fixed in rates until a utility files another rate case. Consistent with the Commission's decision on this issue in a recent rate case,³ the Department recommended that, for ratemaking purposes, the pension discount rate assumption should be set to the pension fund's expected long-term growth rate (i.e., CenterPoint revised the EROA to 7.25 percent). The Department reasoned that this approach reflects the pension portfolio's expected return and avoids overstatement of CenterPoint's current pension liability.

ALJ Report (as summarized in the Commission's June 9, 2014 Order)

The ALJ agreed with the Department that the Company did not demonstrate the reasonableness of its discount rate, particularly because it was significantly lower than the proposed expected long-term growth rate. The ALJ recommended that the Commission calculate the Company's test year pension expense using 7.25% for both the long-term growth rate and the discount rate. The ALJ's finding was based in part on the Department's recommended approach for ratemaking purposes. The ALJ reasoned that setting the two rates to the same figure was consistent with the Commission's decision in the 2012 Xcel Energy rate case.⁴

³ In re: the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota, Findings of Fact, Conclusions of Law, and Order at 7, Docket No. E-002/GR-12-961 (September 3, 2013).

⁴ Ibid.

Exceptions

CenterPoint filed exception comments to the ALJ's discount rate findings, stating: (1) the methodology CenterPoint used was consistent with the methodology used in past proceedings, which had not been challenged, (2) the discount rate was calculated in accordance and in compliance with independent standards, (3) the Department's recommended discount rate [i.e., 8%], lacked objective analytical support, and would cause rates that no longer cover pension expense or contributions, and (4) that each case must stand on its own and Xcel's case findings are distinguishable from CenterPoint's case.

The Department filed an exception only in the context of a clarification.

Commission June 9, 2014 Order⁵

The Commission did not adopt the ALJ's recommended 7.25 percent discount rate and instead adopted a discount rate of 5.35 percent, the five-year average of the Company's historical discount rates (2009 – 2013). In its June 9, 2014 Order, the Commission explained that the 5.35 percent discount rate for ratemaking purposes would be reasonable because it provides for a smoothing effect by addressing the year-to-year variability in pension expenses and is more reasonable than a discount rate determined at a single point in time, a timing governed by the Company's choice to initiate a rate case. The Commission agreed with the Department that neither the accounting standard nor the federal pension funding laws govern pension expense calculations for ratemaking purposes. However, the factual record that resulted in the discount rate determination in the 2012 Xcel rate case does not pertain to the pension expense calculation here. In CenterPoint's case, the Commission decided that the Company's evidence provided the best basis for establishing an appropriate rate.

Department Petition for Reconsideration

The Department's request stated that a discount rate assumption based on an historical average of discount rates calculated using inapplicable accounting standards, while less onerous to ratepayers than CenterPoint's proposal, is still based on inappropriate assumptions. The Department stated that the basis for the assumptions for annual bookkeeping purposes is materially different from the basis for ratemaking purposes. The historical discount rates were designed to reflect a company's current settlement of its future pension obligation, if necessary, due to financial difficulties. No record evidence was shown that CenterPoint, a rate-regulated utility, was at risk of having to settle its future pension obligation. Each of the discount rates used to calculate the five-year average, are based on the inappropriate assumption that the Company must settle its pension obligation.

The Department argued that use of a discount that is different from the expected long-term growth rate (EROA) over the same time period would create an incongruity for ratemaking purposes. When determining the present value of pension obligations, if the discount rate that is used is lower than the expected long-term growth rate of the pension portfolio, it results in a pension liability amount that is higher when compared to what current dollars are needed given the expected return on the portfolio held. This scenario would cause an overstated pension expense for ratemaking.

⁵ Findings of Fact, Conclusions of Law, and Order at 11, this docket (June 9, 2014)

Therefore, the Department reasoned and recommended that the 7.25 percent expected long-term growth rate of the pension portfolio is the appropriate rate to use for the discount rate assumption for ratemaking because it resolves any doubt as to reasonableness in favor of consumers.⁶

Should the Commission reject this petition for reconsideration, the Department requested that the Commission remain open in pending and future rate cases based on the records developed in those proceedings.

CenterPoint Answer to the Department's Petition for Reconsideration

CenterPoint recommended that the Commission should deny the Department's request for reconsideration of the appropriate discount rate to use for calculating qualifying pension expense.

CenterPoint stated that the Department's request ignored the substantial evidence provided by the Company supporting a lower discount rate and ignored the Commission's analysis of the record developed in this case, as expressed in the June 9, 2014 Order. The Department's statement that the use of a discount rate lower than the Department's recommendation would result in "overstated pension expense" being charged to ratepayers finds no record support whatsoever. There is no objective evidence in this record demonstrating that pension expense calculated in the manner recommended by the Company would charge more than needed to meet future pension obligations. CenterPoint stated that the Commission's June 9, 2014 Order makes clear that the Company's evidence provided the best basis for establishing an appropriate rate. Despite that finding, however, the Commission determined that it would intentionally err on the side of ratepayers, by adopting a higher rate than that recommended by the Company. CenterPoint concluded that the Department provides no new argument in its petition for reconsideration that merits reconsideration.

Staff Comment

The question for the Commission is whether it believes there is reason to change or modify the decision reflected in the June 9, 2014 Order. The Commission vote on this matter was 5-0, with Commissioners Heydinger, Boyd, Lange, Lipschultz and Wergin present. Staff does not believe the Department has raised any new issues or legal arguments requiring further consideration.

2. Customer Charges for Small Volume Dual Fuel Transportation

PUC Staff: Andrew Bahn

Issue

Should the Commission clarify the Customer Charges for Small Volume Dual Fuel (SVDF) Transportation customers?

Discussion

⁶ Minn. Stat. § 216B.03 (2014).

The Department's petition requested clarification that the Commission intended the SVDF A – Transportation and SVDF B – Transportation customer charges each to be reduced by \$10, to \$150 and \$180, respectively, consistent with the \$10 reduction to the SVDF A – Sales and SVDF B – Sales customer charges ordered by the Commission. The Department stated that a reduction to the SVDF – Transportation customer charges by \$10 maintains the \$100 difference in customer charges between sales and transportation customers as recommended by CenterPoint witness Burl Drews in his Rebuttal Testimony.

In its June 9, 2014 Order, the Commission concurred with the Administrative Law Judge and accepted her findings, conclusions, and recommendations on the customer charges for Small Volume Dual Fuel Customers. The Administrative Law Judge found that the Department's recommended customer charges maintained neutrality between sales and transportation service by maintaining the existing \$100 customer-charge differential.

The Commission adopted the Department's recommended customer charges in its June 9, 2014 Order. On page 53 of the Order it stated the following:

The Commission concurs with the Administrative Law Judge on these issues and accepts her findings, conclusions, and recommendations. The Commission will adopt the Department's recommended customer charges for these customer classes, as set forth below:

- SVDF – A *Decrease from \$60 to \$50*
- SVDF – B *Decrease from \$90 to \$80*
- LVDF – Sales *Increase from \$600 to \$700*
- LVDF – Transportation *Increase from \$700 to \$900*
- LVF – Transportation *Increase from \$700 to \$900*

The June 9, 2014 Order did not list SVDF A and SVDF B Transportation customers. However, to maintain the existing \$100 differential between sales and transportation service, as recommended by the Department, the ALJ and CenterPoint, it is necessary to reduce both SVDF A and SVDF B Transportation customers charges by \$10, to \$150 and \$180, respectively, consistent with the \$10 reduction to the SVDF A and SVDF B Sales customer charges that are listed in the Commission's Order.

CenterPoint stated that it interpreted the Commission Order to have approved the reduced \$150 and \$180 customer charges for the SVDF A and SVDF B Transportation customers. CenterPoint stated further that if the Commission believes clarification of this point is necessary, it has no objection.

Staff Comments

Staff agrees with CenterPoint's interpretation of the Order. However, if the Commission wishes to make this point more explicitly clear, it may, on its own motion, choose to list the SVDF A and SVDF B Transportation Customer charge decreases separately on page 53 of the June 9, 2014 Order.

Decision Options

1. Discount Rate for Qualified Pension Expense Rate Recovery
 - A. Grant the Department's petition for reconsideration of the June 9, 2014 *Findings of Fact, Conclusions, and Order*; **and**
 1. Affirm the Commission's decision authorizing a 5.35 percent discount rate; or
 2. Modify the Commission's decision and authorize a 7.25 percent discount rate [Department recommendation], or
 3. . Modify the Commission's decision and authorize a 4.75 percent discount rate.
 - B. Toll the time period to allow additional time for reconsideration and to prepare a written order; **or**
 - C. Deny the Department's petition for reconsideration of the June 9, 2014 *Findings of Fact, Conclusions, and Order*. [CenterPoint recommendation]
 - D. Take no action on the Department's petition for reconsideration, thereby, allowing the Petition to be considered denied by operation of law as of August 29, 2014.
2. Customer Charges for Small Volume Dual Fuel Transportation:
 - A. Grant the Department's request for clarification of the Commission's June 9, 2014 *Findings of Fact, Conclusions, and Order* (June 9, 2014 Order) to indicate that the SVDF A and SVDF B Transportation customer charges be reduced by \$10, to \$150 and \$180, respectively, consistent with the \$10 reduction to the SVDF A and SVDF B Sales customer charges. This clarification to its June 9, 2014 Order is on page 53 of the Order and should be corrected to read as follows:

The Commission concurs with the Administrative Law Judge on these issues and accepts her findings, conclusions, and recommendations. The Commission will adopt the Department's recommended customer charges for these customer classes, as set forth below:

- | | |
|----------------------------------|-------------------------------------|
| • SVDF – A | Decrease from \$60 to \$50 |
| • SVDF – B | Decrease from \$90 to \$80 |
| • <u>SVDF A – Transportation</u> | <u>Decrease from \$160 to \$150</u> |
| • <u>SVDF B – Transportation</u> | <u>Decrease from \$190 to \$180</u> |
| • LVDF – Sales | Increase from \$600 to \$700 |

- LVDF – Transportation Increase from \$700 to \$900
- LVF – Transportation Increase from \$700 to \$900

- B. Deny the Department’s request for clarification and find that the Commission’s June 9, 2014 *Findings of Fact, Conclusions, and Order* does not require clarification because it is clear the Commission authorized the reduced \$150 and \$180 customer charges for the SVDF A and SVDF B Transportation customers, or
- C. Make some other change or clarification to the SVDF A and B transportation customer charges.

Appendix A - Relevant Law

Minnesota Statute - 216B.27 REHEARING; CONDITION PRECEDENT TO JUDICIAL REVIEW.

Subdivision 1. Applying for rehearing.

Within 20 days after the service by the commission of any decision constituting an order or determination, any party to the proceeding and any other person, aggrieved by the decision and directly affected thereby, may apply to the commission for a rehearing in respect to any matters determined in the decision. The commission may grant and hold a rehearing on the matters, or upon any of them as it may specify in the order granting the rehearing, if in its judgment sufficient reason therefor exists.

Subd. 2. Contents of application; condition precedent for review.

The application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. No cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof shall accrue in any court to any person or corporation unless the plaintiff or petitioner in the action or proceeding within 20 days after the service of the decision, shall have made application to the commission for a rehearing in the proceeding in which the decision was made. No person or corporation shall in any court urge or rely on any ground not so set forth in the application for rehearing.

Subd. 3. Rules; procedural requirements; commission's authority.

Applications for rehearing shall be governed by general rules which the commission may establish. In case a rehearing is granted the proceedings shall conform as nearly as may be to the proceedings in an original hearing, except as the commission may otherwise direct. If in the commission's judgment, after the rehearing, it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify, or suspend the original action accordingly. Any decision, order, or determination made after the rehearing reversing, changing, modifying, or suspending the original determination shall have the same force and effect as an original decision, order, or determination. Only one rehearing shall be granted by the commission; but this shall not be construed to prevent any party from filing a new application or complaint. No order of the commission shall become effective while an application for a rehearing or a rehearing is pending and until ten days after the application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing.

Subd. 4. Deadline to grant application.

Any application for a rehearing not granted within 60 days from the date of filing thereof, shall be deemed denied.

Subd. 5. Effect of decision on application.

It is hereby declared that the legislative powers of the state, insofar as they are involved in the issuance of orders and decisions by the commission, have not been completely exercised until the commission has acted upon an application for rehearing, as provided for by this section

and by the rules of the commission, or until the application for rehearing has been denied by implication, as above provided for.

Minnesota Rule - 7829.3000 PETITION AFTER COMMISSION DECISION.

Subpart 1. Time for request.

A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

Subp. 2. Content of request.

A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. Service.

A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. Answers.

Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. Replies.

Replies are not permitted unless specifically authorized by the commission.

Subp. 6. Commission action.

The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

Subp. 7. Second petition not entertained.

A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained.