

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

<i>In the Matter of an Inquiry into Exemptions for Small Gas Utility Franchises Under Minnesota Statute 216B.16, Subd. 12, for Gorham’s Incorporated, Northwest Natural Gas, LLC, Northwest Natural Gas of Murray County, Inc., and Northwest Natural Gas of Cass County LLC (Northwest).</i>))))))))	MPUC Docket Nos. G6278, G6279, G6280/CI-18-770 REQUEST FOR RECONSIDERATION BY GORHAM’S INC., NORTHWEST NATURAL GAS LLC, AND NORTHWEST NATURAL GAS OF MURRAY COUNTY LLC

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, Gorham’s Inc., Northwest Natural Gas LLC, and Northwest Natural Gas of Murray County LLC (collectively, “Northwest Utilities”) respectfully request rehearing and reconsideration of the Minnesota Public Utilities Commission’s (“Commission”) June 22, 2021 Order Accepting Filing and Establishing Additional Requirements (“June 22 Order”) issued in the above-referenced proceedings.

Initially, the Northwest Utilities greatly appreciate the Commission’s attempt to balance multiple interests in reaching its determination in these proceedings. With this recognition, the Northwest Utilities limit their reconsideration request to one discrete aspect of the Commission’s finding that the Northwest Utilities are the “same public utility” for the purposes of Minn. Stat. § 216B.16, Subd. 12.

In particular, the Northwest Utilities request that the Commission reconsider its determination that Gorham’s Inc., an entity solely owned by Mr. Mike Gorham, should be treated as the “same utility” as two LLC entities in which Mr. Gorham holds only a minority interest. As explained herein, the Commission’s novel doctrine of minority owner influence goes beyond even the arguments made by the Department, and will result in unintended consequences that can be

avoided. Due to the importance of the issue, the Northwest Utilities respectfully request the opportunity to present oral argument on the matters set forth herein.

I. DISCUSSION

Though the Commission considered and decided multiple issues in its June 22 Order, the Northwest Utilities request reconsideration on only the discrete issue of whether the Northwest Utilities are “the same public utility.”¹ In the June 22 Order, the Commission reasoned that “although the companies do not share identical ownership and governance, the overlap in this case is enough to raise questions about unified control or influence between the three companies under the totality of the circumstances.”² The Northwest Utilities believe this warrants reconsideration at least with respect to Gorham’s Inc.

As the record in this case shows, Gorham’s Inc. is owned by a single shareholder, Mike Gorham. Mr. Gorham has only a minority ownership interest in Northwest Natural Gas LLC, and Northwest Natural Gas of Murray County LLC. Those companies are ultimately overseen by their members, with such members only able to vote their respective ownership shares. Mr. Gorham’s minority ownership share in the LLCs is not “enough overlap” to establish “unified control or influence,” particularly where (1) the Commission has directed the Northwest Utilities to take specific steps to ensure that the utilities operate more independently going forward;³ (2)

¹ See June 22 Order at 13.

² *Id.* at 7.

³ For instance, the Commission directed that “Northwest shall file a new request for a small gas utility exemption in a separate docket within 90 days” and that “for each Northwest franchise agreement between a municipality and an entity that is not currently serving that municipality with natural gas service, the municipality shall execute a new franchise agreement with the entity serving the municipality, and Northwest shall file the franchise agreement with the Commission, within 90 days.” *Id.* at Ordering paragraphs 4 and 5.

the Utilities themselves have committed to taking additional steps;⁴ and (3) the Utilities have separate municipal regulators, customers and operate in geographically distinct service areas.

In their Comments preceding the June 22 Order, the Northwest Utilities and the Department of Commerce offered the Commission distinct legal doctrines to determine whether the Northwest Utilities could appropriately be considered “one utility.” The Northwest Utilities suggested that the Commission could base its inquiry on the principle of “piercing the corporate veil.” That doctrine dictates that the corporate form be observed unless a corporation is insufficiently distinct from its owner and that lack of distinction works an injustice.⁵ The Department, by contrast, urged the Commission to consider whether the utilities are “alter egos” of each other, an analysis from personal jurisdiction cases involving wholly-owned subsidiaries acting as stalking horses for out of state entities.⁶ While the doctrines have distinct applications and tests, they both allow courts to discard the corporate form only on a similar finding: that an owner treats her corporation not as a distinct legal entity, but as property.

In its June 22 Order, the Commission decided neither line of case law “directly addresses the question presented.”⁷ Instead, the Commission created a new doctrine of “influence.”⁸ Under this doctrine, a minority owner treats a corporation as her own property because of apparent acquiescence by the actual owners. This new doctrine is unwieldy and likely to lead to unwanted results.

⁴ See Northwest Utilities Reply Comments, December 15, 2020, at 15-17.

⁵ June 22 Order at 4-5, 7.

⁶ *Id.* at 5-7.

⁷ *Id.* at 7.

⁸ *Id.*

First, the Northwest Utilities are aware of no cases under either doctrine presented in this proceeding where a minority shareholder was deemed the owner of an entity, or where a minority shareholder was deemed the alter ego of a corporation. This new doctrine has potential to muddle future analysis. Indeed, Vanguard owns 8% of Xcel and 11% of CenterPoint.⁹ These are on the same order as Mike Gorham’s shares in the LLCs, with similar legal power to control the entities. However, no one could reasonably suggest that Vanguard has the right to control the utilities.

Second, the doctrine will prove difficult to adjudicate. In this instance, it depends on the Commission’s finding — without first-hand testimony—that Mr. Gorham exerts influence as a minority shareholder that goes beyond his ownership stake and operational expertise. The doctrine will likely chill participation by minority owners who rightly fear that offering a good idea, a business proposition, or promotional help will transform them into owners for the purpose of regulation.

Third, the doctrine of “influence” creates problems for the owners of Northwest Natural Gas LLC and Northwest Natural Gas of Murray County, LLC, who will be effectively bound by the actions of Gorham’s, Inc., without any control over them. The same is true in reverse. Mr. Gorham cannot legally prevent the LLCs from taking actions that could profoundly affect Gorham’s Inc. While he retains his “influence,” that has no legal salience. This muddles the duties of shareholders, directors, and owners.

The Commission likely did not intend this result when it ruled the Northwest Utilities are “one utility.” Indeed, the confusion over the “one utility” issue, coupled with the Commission’s determination that the 5,000 total customer count is a hard cap to a utility’s eligibility for local

⁹ <https://money.cnn.com/quote/shareholders/shareholders.html?symb=XEL&subView=institutional> and <https://money.cnn.com/quote/shareholders/shareholders.html?symb=CNP&subView=institutional> (both last accessed 7/2/2021.)

rate regulation, is already creating real-world consequences and challenges for the Northwest Utilities. After the hearing that led to the June 22 Order and providing notice to regulating municipalities, the Northwest Utilities made the difficult decision to stop connecting new customers because the combined "public utility" is close to the 5,000 customer threshold. The Northwest Utilities made this difficult decision because exceeding the customer threshold could result in increased costs for all customers and remove regulation from the communities the Northwest Utilities serve, which is contrary to the municipalities' desire to continue local regulation.

The Northwest Utilities do not want its decision to be perceived as a threat or overreaction; instead, the Utilities need to better understand what future Commission regulation might mean for its existing customers and the communities they serve going forward before crossing the customer threshold. Reconsideration will alleviate the confusion and allow Gorham's, on the one hand, and the LLCs, on the other, to move forward and continue providing gas to customers in rural Minnesota under the regulatory framework established in the other parts of the June 22 Order.

II. CONCLUSION

For the reasons set forth above, the Northwest Utilities respectfully request that the Commission reconsider its June 22 Order and clarify that Gorham's Inc. is not the "same utility" as Northwest Natural Gas LLC and Northwest Natural Gas of Murray County LLC. Such a decision would appropriately recognize that the safeguards set forth in the Commission's June 22 Order will ensure that the Utilities operate more independently going forward.

Dated: July 12, 2021

Respectfully submitted,

Northwest Utilities

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for Small Gas Utility Franchises Under)
Minn. Stat. § 216B.16, Subd. 12, for)
Gorham's Inc., Northwest Natural Gas,)
LLC, Northwest Natural Gas of Murray)
County, Inc., and Northwest Natural Gas of)
Cass County, LLC (Northwest).)*

MPUC Docket Nos. G-6278,
G-6279, G-6280/CI-18-770

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 12, 2021, a true and correct copy of **Gorham's, Inc., Northwest Natural Gas LLC, and Northwest Natural Gas of Murray County LLC's Motion for Reconsideration** was served by e-mail and/or U.S. Mail to the following:

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Dated this 12th day of July, 2021

/s/ Joshua M. Feit
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