MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147

Katie Sieben	Chair
Joseph Sullivan	Vice Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of the Commission's Investigation into the Impact of Severe Weather in February 2021 on Impacted Minnesota Natural Gas Utilities and Customers	Docket No. G-999/CI-21-135
In the Matter of the Petition by Great Plains Natural Gas Company, a Division of Montana-Dakota Utilities Company, for Approval of Rule Variances to Recover High Natural Gas Costs from February 2021	Docket No. G-004/M-21-235

DEPARTMENT OF COMMERCE'S ANSWER TO GREAT PLAINS' PETITION FOR RECONSIDERATION

The Minnesota Public Utilities Commission should deny Great Plains' petition for reconsideration.[1] The Commission reconsiders its decisions only when petitions raise new issues, point to new and relevant evidence, expose errors or ambiguities in the underlying order, or otherwise persuade the Commission that it should rethink its decision.[2] Great Plains' arguments cannot prevail on appeal either. The Commission's October 19 order was legally sound, supported by substantial evidence, and well-reasoned.

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[1] Minn. R. 7829.3000, subp. 4 (2021) ("Other parties to the proceeding shall file answers to a petition for . . . reconsideration . . . within ten days of service of the petition.").

[2] *See, e.g.*, *In re Inquiry into Exemptions for Small Gas Util. Franchises Under Minn. Stat. § 216B.16, Subd. 12, for Gorham's, Inc., Nw. Nat. Gas, LLC, Nw. Nat. Gas of Murray Cty., Inc., & Nw. Nat. of Cass Cty.*, Docket Nos. G-6278, G-6279, G-6280/CI-18-770, ORDER DENYING RECONSIDERATION at 1 (Aug. 27, 2021).

ARGUMENT

I. GREAT PLAINS' PETITION FAILS TO MEET THE COMMISSION'S STANDARD.

Great Plains fails to raise new issues or new and relevant evidence as required by the Commission's reconsideration standard. Instead, Great Plains retreads arguments about storage withdrawals and interpretation of its curtailment tariff that the Commission has already expressly rejected in its well-reasoned order.

The Commission determined that Great Plains imprudently failed to maximize available storage on February 17 when the extent and severity of the price spike was well-understood. The Commission determined that prudence required Great Plains to actively manage its available resources and make some meaningful efforts to mitigate ongoing economic harm to its customers.[3] The Commission further rejected Great Plains' claim that a 13% reserve margin was necessary for February 17, reasoning that Great Plains had operated with a 1.8% margin during the prior four days and that, by the company's own admission, temperatures were beginning to moderate.[4] These determinations were well-within the Commission's expertise to make. The Commission was not required to mechanically adopt the Administrative Law Judges' recommendations. As the final decisionmaker, the Commission was obligated to employ its expertise to render an independent decision.[5] Only the Commission has the "experience, technical competence, and specialized knowledge" necessary to evaluate "the evidence in the hearing record."[6] Unlike ALJs who are well-rounded generalists, commissioners are appointed with consideration of past experience "in the profession of engineering, public accounting, property and utility valuation, finance, physical

[3] Great Plains Order at 16.
[4] *Id.* at 17.
[5] *City of Moorhead v. Minn. Pub. Utilities Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984).
[6] Minn. Stat. § 14.60, subd. 4 (2020).

or natural sciences, production agriculture, or natural resources."[7] This special expertise means that commissioners are in the best position to assess what constitutes prudent utility practice under specific conditions. ALJ recommendations, by contrast, are "merely one part of [the] record."[8] In this instance, the Commission explained in detail the evidence that warranted departure from the ALJ recommendations.

The Commission likewise persuasively and comprehensively explained why it concluded Great Plains' tariff permitted economic curtailment. In response, Great Plains simply repeats the arguments it made elsewhere. Reconsideration requires more than re-argument. Absent new evidence or new issues or confusion arising from the underlying order, there is no basis for reconsideration. In this instance, Great Plains has not met this bar and the Commission should decline to take up its petition.

II. GREAT PLAINS' DOES NOT RAISE ARGUMENTS THAT WOULD WARRANT REVERSAL ON APPEAL.

Great Plains frames its reconsideration request based on the standards for appellate review of administrative decisions in section 14.69 of the Minnesota Statutes. Great Plains claims that the Commission's findings and conclusions are "affected by errors of law and are otherwise inconsistent with the record evidence."[9] Great Plains also claims that the Commission acted arbitrarily and capriciously.[10] Neither argument has merit.

The Commission's decisions are entitled to significant deference on appeal, and the Commission is presumed to have the expertise necessary to decide technical matters within its

[7] Minn. Stat. § 216A.03, subd. 1 (2020).
[8] *City of Moorhead*, 343 N.W.2d at 847.
[9] Great Plains Petition at 1 (citing Minn. Stat. § 14.69).
[10] Great Plains Petition at 14 & n.49.

authority.[11] A Commission decision may only be reversed, remanded, or modified if it runs afoul of one of six statutory standards.[12] The scope of review on appeal is limited to the issues raised by a party in its reconsideration petition.[13] Great Plains raises no arguments that would warrant reversal on appeal. Instead, the Commission's well-reasoned decision was made in accordance with law and is supported by substantial evidence when looking to the entire record.

A. The Commission Correctly Interpreted Great Plains' Tariffs as Permitting Economic Curtailment of Its Interruptible Customers.

Great Plains argues that the Commission erred by interpreting its tariffs to allow it to curtail its interruptible customers to prevent economic harm. The Commission has heard Great Plains' arguments before, and the Commission need not revisit its legally sound decision.

Tariffs are interpreted like other contracts, with words being given their ordinary meaning read in light of the tariff as a whole.[14] The Commission engaged in a thorough review of the language of Great Plains' tariffs, employed the proper interpretation principles, and came to the correct conclusion that "[u]nder the broad tariff authority, Great Plains had the latitude to decide to curtail interruptible customers to reduce expensive spot-gas purchases."[15] Great Plains' strained reading fails to account for the tariff as a whole. And Great Plains' claims about the requirements of the filed-rate doctrine continue to be unsupported.

First, Great Plains again tries to graft limitations from the priority-of-service provision of its General Terms and Conditions tariff onto its interruptible tariff to condition its clear discretion

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[11] *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).
[12] Minn. Stat. § 14.69 (2022).
[13] *See* Minn. Stat. § 216B.27, subd. 2; *In re Enbridge Energy, Ltd. P'ship*, 964 N.W.2d 173, 188 n.18 (Minn. Ct. App. 2021).
[14] *Info Tel Commc'ns, LLC v. Minn. Pub. Utils. Comm'n*, 592 N.W.2d 880, 884 (Minn. Ct. App. 1999).
[15] Great Plains Order at 22.

to curtail its interruptible customers.[16] Great Plains argues that it is "incongruous for Great Plains' Tariff to contain very detailed provisions addressing the precise order of curtailment for operational reasons, while at the same time not including any parameters regarding the circumstances under which customers may be economically curtailed."[17] But the limitation on curtailment for "operational reasons" in the priority-of-service section in the General Terms and Conditions makes sense because this tariff reaches many customer classes that have not agreed to, or received a discount for, ceasing service when called upon by Great Plains. It also is why the Great Plains' interruptible service tariff contains its own "priority of service" section, that has no limitation for "operational reasons." The interruptible service tariff expressly states that Great Plains has "the right to curtail or interrupt whenever, in the Company's sole judgement, it may be necessary to do so to protect the interests of its customers who capacity requirements are otherwise given priority."[18] There is no incongruity. The Commission correctly determined that Great Plains' reading strains the plain language of its tariffs.[19]

Second, Great Plains again incorrectly invokes the filed-rate doctrine, claiming the Commission violated the doctrine because customers would not have received explicit notice of the precise reason for Great Plains' curtailment decision.[20] In Minnesota, the filed-rate doctrine, at its core, prevents collateral attack on filed rates by the judiciary.[21] The doctrine does not prevent enforcement of a tariff's language.[22]

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[16] Great Plains Petition at 3-4.
[17] *Id.* at 5.
[18] Large Interruptible Gas Sales Service Rate 85, Original Sheet No. 5-50, *available at* https://www.gpng.com/wp-content/uploads/PDFs/Rates-Tariffs/Minnesota/MNGas85.pdf, [Perma cc: https://perma.cc/2VTK-K4LS].
[19] Great Plains Order at 22.
[20] Great Plains Petition at 6-7.
[21] *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 44 (Minn. 2009).
[22] *See id.*

Great Plains provides no support for its argument that the doctrine requires such explicit notice beyond notice of the utility's broad discretion to curtail interruptible customers to protect the interests of firm customers.[23] Further, if the doctrine requires the explicit notice that Great Plains alleges, Great Plains would have clearly violated its own tariff by curtailing its grain drying class during the February Event. Great Plains argues that its grain drying class is different because grain dryers must request to come online.[24] But Great Plains' grain drying tariff does not *explicitly* allow Great Plains to deny a request to startup grain drying operations for economic reasons. Instead, as the Commission correctly observed, "the grain-drying tariff's notice requirements do not provide Great Plains with any additional authority to curtail service to grain dryers beyond that provided in other interruptible tariffs.[25]

The Commission's interpretation of Great Plains' tariffs is sound and does not violate the filed-rate doctrine. It should not reconsider.

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[23] Great Plains supports its filed-rate doctrine argument by citing law that merely affirms the unremarkable proposition that a regulated entity may not charge a rate that is not filed with a commission. *See* Great Plains Petition at 6, n.14 (citing Minn. Stat. § 216B.05, subd. 1; *Ark. La. Gas Co v. Hall*, 452 U.S. 571, 577 (1981)). The Commission did not find that Great Plains should not have applied its tariff. Instead, the Commission determined that the tariff's plain language gave Great Plains discretion to curtail interruptible customers to protect the economic interests of its firm customers.

[24] Great Plains Petition at 6-7.

[25] Great Plains Order at 23; Interruptible Grain Drying Gas Sales Service Rate, Original Sheet No. 5-33, *available at* https://www.gpng.com/wp-content/uploads/PDFs/Rates-Tariffs/Minnesota/MNGas73.pdf [perma cc: https://perma.cc/8RWV-72JH] ("Customers taking service hereunder agree that the Company, without prior notice, shall have the right to curtail or interrupt such service, in the Company's sole judgment, it may be necessary to do so to protect the interests of its customers whose capacity requirements are otherwise and hereby given preference.").

B. Substantial Evidence Supports the Commission's Decision in View of the Entire Record.

Great Plains also argues that the Commission's determination that prudence required maximizing storage on February 17 rather than reverting to its standard winter plan and using at most a 2% reserve margin are unsupported by substantial evidence.[26]

Great Plains' substantial evidence arguments reach their conclusion by picking and choosing portions of the record and almost exclusive citation to its own witness's testimony. This is not how the substantial evidence standard is applied. Courts may reverse or modify an administrative decision only if it is "unsupported by substantial evidence *in view of the entire record as submitted*."[27] The question is not whether substantial evidence supports Great Plains' position or whether the Commission could have weighed evidence differently. Instead, the question is whether there is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and more than a 'scintilla,' 'some' or 'any' evidence."[28] The Commission need only adequately explain "how it derived its conclusion and whether that conclusion is reasonable on the basis of the record."[29] The substantial-evidence standard is "rooted in the deference [courts] show to matters that are properly within the agency's particular expertise."[30]

Here, the Commission thoroughly explained its conclusions and reasoning for why it decided between competing expert determinations to disallow gas costs for Great Plains' failure to curtail interruptible customers and failure to maximize storage. The Commission used its expertise to examine the record, weigh the evidence, and come to a reasonable conclusion.

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[26] *See* Great Plains Petition at 8-15.
[27] Minn. Stat. § 14.69 (emphasis added).
[28] *In re NorthMet Project Permit to Mine Application Dated Dec. 2017*, 959 N.W.2d 731, 749 (Minn. 2021) (cleaned up).
[29] *Id.*
[30] *Id.*

1. Substantial Evidence Established that Great Plains Imprudently Reverted to Its Standard Storage Plan on February 17.

Great Plains argues that the Commission "did not adequately consider" Great Plains' evidence related to information available when it made its February 17 storage decision.[31] Great Plains asserts it considered four factors: (1) moderating temperatures; (2) more normal gas prices; (3) supply flexibility; and (4) lower storage volumes than the monthly plan. The Commission thoroughly considered the justifications provided by Great Plains; it simply found them unpersuasive and explained why.

Applying the prudence standard, the Commission appropriately determined that when purchasing gas for February 17 a reasonable utility would have planned to use all available storage gas to offset spot market purchases. As noted in the Commission's order, the record contains evidence countering Great Plains' justifications for why it failed to use all its storage.[32]

First, while temperatures were moderating, that was not a reason draw down levels of cheap storage gas in favor of exposure to what Great Plains acknowledged was "a risky price environment."[33] Although temperatures had started climbing in Minnesota, it remained unusually cold in the south-central United States, the source of much of the natural gas in the market.[34] Moderating Minnesota temperatures did not allow utilities to disregard other signals that gas prices were likely to remain extremely high.

Second, the Commission's conclusion that it was unreasonable for Great Plains to expect more normal gas prices on February 17 has ample support in the record.[35] The gas prices over the four-day weekend preceding the February 17 gas day were not only high but historic, even

[31] Great Plains Petition at 9.
[32] *See* Great Plains Order at 12-13.
[33] *See* Great Plains Order at 12; GP Ex. 300, Attach. A at 4 (Jacobson Direct).
[34] DOC Ex. 506, MJK-D-11 at 1 (King Direct).
[35] *See* Great Plains Order at 16; ALJs' Great Plains Report ¶149.

compared to the 2017-18 New Year's price spike.[36] A reasonable utility would have been aware of several facts that showed gas prices were likely to remain extraordinary. By the time it needed to purchase gas on February 16, a reasonable utility would have known that natural gas production failures had continued to increase considerably and that ERCOT, SPP, and MISO were instituting controlled power outages causing millions of customers to be without power, including wellhead operations, processing facilities, and pipelines moving gas out of the Permian Basin.[37] All these facts showed "the gas market was in unprecedented territory in terms of price."[38]

Third, the Commission's rejection of Great Plains' invocations of supply uncertainty and reliability concerns to the exclusion of all other concerns is sound. The Commission's determination that Great Plains "failed to demonstrate that reasonable reliability concerns justified its decision not to maximize its available storage resources" is supported by the record.[39] While Great Plains continues to state that it was reasonable to expect supply disruptions due to disruptions during the four-day period,[40] Great Plains never quantified any supply disruptions it experienced beyond noting that they were "within pipeline tolerances."[41] The Commission was entitled to hold Great Plains to its burden of proof and find that concern for potential supply disruptions did not outweigh the likelihood of significant economic harm to Great Plains customers by drawing down

[36] *See* Great Plains Order at 12. The levels reached for the four-day period—$154.9/Dth at Ventura, $231.7/Dth at Demarc—were 238% and 350%, respectively, above the previous record of $65 set at Ventura during the 2017-18 New Year Event. *See* Ex. DOC-507 at 5 (King Surrebuttal).
[37] *Id.*; Joint Utils. Ex. 100 at 51 (Smead Direct).
[38] DOC Ex. 507 at 4 (King Surrebuttal).
[39] Great Plains Order at 17.
[40] Great Plains Petition at 11.
[41] *See, e.g.*, GP Ex. 303 at 8-9 (Nieuwsma Rebuttal).

storage. In addition, the Commission recognized Great Plains retained the option to curtail its customers if larger supply disruptions occurred.[42]

Last, Great Plains' stated need to retain storage for use later in the winter continues to be unsupported. On February 17, Great Plains had significant amounts of storage inventory remaining and it had only minimally departed from its planned storage withdrawals.[43]

Substantial record evidence supports the Commission's determination that Great Plains acted imprudently in reverting to its standard winter storage plan instead of making some meaningful efforts to mitigate ongoing economic harm to its customers. The Commission should not reconsider.

2. The Commission's Determination that Great Plains' Supply Reserve Margin was Unreasonable and a 2% Supply Reserve Margin Should be Used to Calculate Disallowances Has Substantial Record Support.

Great Plains asks the Commission to reweigh evidence, disputing its conclusion that Great Plains did not carry its burden to show its 13% supply reserve margin was reasonable.[44] Great Plains argues that it acted reasonably because it explained and justified its 13% supply reserve margin, stating that the margin was within the range of actual load exceeding forecasted load the previous weekend.[45] This does not establish prudency. As the Commission explained, Great Plains failed to show that a 13% supply reserve margin was within a reasonable range when planning for the February 17 gas day.[46] The Commission determined, "The Department's expert credibly and persuasively testified that a supply reserve margin slightly exceeding forecasted load

[42] *See* Great Plains Order at 16. Note that the Commission determined that prudence only required curtailing 50% of interruptible customers for economic purposes, leaving the rest available for curtailment should supply constraints emerge. *See id.* at 23.
[43] DOC Ex. 507 at 51 (King Surrebuttal); GP Ex. 303 at 13 (Nieuwsma Direct).
[44] Great Plains Petition at 12-15.
[45] *See id.* at 12-13.
[46] Great Plains Order at 17.

was consistent with the industry."[47] Purchasing 13% above forecasted load is by no means "slight," and credibility determinations are within the Commission's discretion for both lay witnesses and experts.[48]

Great Plains' advocates that its 13% supply reserve margin was reasonable because it "reasonably expected prices to moderate."[49] But the Commission (and the ALJs) correctly deemed Great Plains' expectation about February 17 prices unreasonable.[50] The Commission adopted the ALJs' finding that, by February 16, "Great Plains knew or should have known that the country and its energy markets were in the midst of an extraordinary even with the associated risk of spot gas prices remaining extremely high."[51] And as the Commission stated, "[b]y February 16, a prudent gas utility would have understood the extreme cost risk to customers posed by additional spot gas purchases and made *some* effort to reduce its excessive supply reserve margin to avoid purchasing unnecessary spot gas."[52]

The Commission's disallowance calculation is also supported by the record. As the Commission stated in its order: "A 2% supply reserve margin is consistent with planning for purchases slightly exceeding projected load, and it is slightly higher than the planned supply reserve margins employed by several gas utilities over the holiday weekend, including Great Plains' own supply reserve margin of 1.8% on February 14."[53] The Commission should not reconsider.

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[47] *Id.*
[48] *See Schultz v. U.S. Bedding Co.,* 297 N.W. 351, 352 (Minn. 1941) ("[W]e do not try the facts nor determine the credibility of the testimony of witnesses, be they laymen or medical experts.").
[49] Great Plains Petition at 13.
[50] *See* Great Plains Order at 16; ALJs Great Plains Report ¶149.
[51] ALJs Great Plains Report ¶149.
[52] Great Plains Order at 17.
[53] *Id.*

C. The Commission's Supply-Reserve Margin Determination Is Not Arbitrary and Capricious.

The Commission appropriately rejected Great Plains' arguments that fuel-in-kind requirements make a 2% reserve margin unreasonable.[54] To be clear, Great Plains does not argue about the specifics of the Commission's disallowance calculation. While the Commission had several disallowance-calculations before it, the Commission spent considerable time at the agenda meeting ensuring it understood the Department's calculation methodology and ultimately adopted it.[55] Instead, Great Plains now claims that the Commission arbitrarily and capriciously failed to address a single counterargument from its witness regarding the appropriate supply reserve margin for February 17.[56]

A decision will be considered arbitrary and capricious only if it "*entirely* failed to consider an *important* aspect of the problem."[57] The Commission need not address every sub-argument put forward or every point of contention in a battle of experts. Instead, the Commission receives deference regarding "conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony."[58] Here the Commission neither failed to consider this argument, nor was it a central tenet of the discussion regarding appropriate supply reserves. The Commission considered Great Plains' argument but instead reached a different conclusion.[59] That the Commission did not specifically call out this sub-argument from Great Plains' rebuttal testimony in the "Commission Action" section of its order does not show arbitrariness.

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[54] *See* Great Plains Petition at 14.
[55] *See* Aug. 11, 2022 Hrg. Tr. at 52-56.
[56] *See* Great Plains Petition at 14 n.49.
[57] *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 118 (Minn. 2009) (emphasis added).
[58] *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d at 278.
[59] *See* Great Plains Order at 14.

While the question of an appropriate supply reserve margin was central to the case across utilities, Great Plains was the only utility to make this claim about fuel-in-kind requirements. And it did so only in rebuttal testimony, through in a single question and answer.[60] The Commission's rejection of this sub-argument was appropriate. Great Plains is subject to the same standard shipping terms as the other utilities, including for fuel-in-kind requirements.[61] It should be treated no differently, and a 2% supply reserve margin is reasonable and supported by the evidence.

CONCLUSION

Great Plains failed to raise new issues, point to new and relevant evidence, expose errors or ambiguities in the underlying order, or present evidence that otherwise warrants reconsideration. The Commission's order is legally sound, supported by substantial record evidence, and well-reasoned. The Commission should deny the company's petition.

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[60] *See* GP Ex. 304 at 14-15 (Nieuwsma Rebuttal.
[61] The fuel-in-kind provisions are a "FERC-regulated rate." *Id.* at 15.

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Respectfully submitted,

Keith Ellison
State of Minnesota
Attorney General

/s/ Katherine Hinderlie
KATHERINE HINDERLIE
Assistant Attorney General
Attorney Reg. No. 0397325

RICHARD DORNFELD
Assistant Attorney General
Attorney Reg. No. 0401204

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1468 (Voice)
(651) 297-1235 (Fax)
katherine.hinderlie@ag.state.mn.us

ATTORNEYS FOR MINNESOTA
DEPARTMENT OF COMMERCE

|#5362505-v3