


Staff Briefing Papers

Meeting Date	December 8, 2022	Agenda Item 2**
Company	Great Plains Natural Gas Co. (Great Plains, Company)	
Docket No.	G-004/M-21-235	
	In the Matter of the Petition by Great Plains Natural Gas Co., a Division of Montana-Dakota Utilities Co., for Approval of Rule Variance to Recovery High Natural Gas Costs from February 2021	
Issues	Should the Commission reconsider its October 19, 2022 Order disallowing recovery of certain natural gas costs and requiring certain action?	
	If so, which disallowances should be changed and by how much?	
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 Relevant Documents	Date
Minnesota Public Utilities Commission – <i>Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action</i>	October 19, 2022
Great Plains Natural Gas Company – Request for Reconsideration	November 8, 2022
Office of the Attorney General – Residential Utility Division – Reconsideration	November 18, 2022
Department of Commerce – Division of Energy Resources – Answer to Reconsideration	November 18, 2022
Citizens Utility Board of Minnesota – Answer to Reconsideration Petition	November 18, 2022

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

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I. Statement of the Issues

Should the Commission reconsider its October 19, 2022 Order disallowing recovery of certain natural gas costs and requiring certain action?

If so, which disallowances should be changed and by how much?

II. Introduction

On October 19, 2022, the Minnesota Public Utilities Commission (Commission) disallowed recovery of approximately \$845,000 of Great Plains' February 2021 cold weather costs (February Event).

On November 8, 2022, Great Plains Natural Gas filed a request for rehearing and reconsideration of the Order of October 19.

On November 18, 2022, the Citizens Utility Board of Minnesota (CUB), the Department of Commerce Division of Energy Resources (Department) and the Office of the Attorney General, Residential Utilities Division (OAG) filed answers recommending that Great Plains Motion for reconsideration be denied.

III. Motion for Rehearing and Reconsideration

Great Plains believed the October 19 order to be generally well-reasoned and accurately reflected the record developed in the proceeding; however, Great Plains disagreed with the Commission order on two points.

Great Plains argued that the finding that it was imprudent in failing to plan to economically curtail interruptible customers was not supported by substantial record evidence. Also, Great Plains argued that the finding that it was imprudent in failing to maximize storage withdrawal was not supported by substantial record evidence.

1. The Commission's Determination that Great Plains' Tariff Provided it with the Discretion to Economically Curtail Interruptible Customers Contradicts the Plain Language of the Tariff

Great Plains argued that the plain language of its tariff did not allow it to economically curtail customers. Great Plains interpreted the language in the "priority of service" section of its tariff regarding firm customers' "capacity requirements" as limiting the authority to interrupt under the tariff to operational reasons for curtailment. Great Plains noted that the tariff does not anywhere specify an authority to curtail service for economic reasons.

Since the tariff specifies a circumstance under which service will be curtailed (i.e., to protect firm customers' priority of service) and does not mention another (i.e., economic curtailment), Great Plains argued that, under the statutory interpretation



maxim, “inclusion of one is the exclusion of another” that by specifying that protection of service is covered by the interruptible service tariff, the tariff is implicitly excluding economic curtailment.

Great Plains also argued that it would be incongruous for the tariff to specify in such great detail the order of curtailment for operational reasons, while not specifying the circumstances under which economic curtailment could occur, if such curtailment were contemplated under the tariff. The tariff has never been vetted for economic curtailment and certain questions need to be answered before such curtailment could be considered under the tariff, including, but not limited to:

- a) What volume of curtailment is allowable for an economic event?
- b) At what gas price could an economic curtailment be called?

Great Plains also noted that, because the tariff does not explicitly contemplate economic interruption, customers are not in any way notified that economic interruption could occur, a principal requirement of Filed Rate Doctrine.

Great Plains noted that the Commission cited grain dryers – who were interrupted for the event – as a precedent for economic interruption. Great Plains argued that grain dryers are required to specifically notify Great Plains that they will operate, unlike other interruptible customers, who are considered to be operating as a state of normal business. As such, it is reasonable for Great Plains to have told the grain dryers not to operate during the event, since telling those customers not to operate is not interrupting load, but rather mitigation against an unexpected increase in load.

2. The Commission’s Determination that Great Plains was Imprudent in Reverting to its Winter Storage Plan is not Supported by Substantial Record Evidence

Great Plain argued that, in making its decision to revert to its storage plan for February 17, it reasonably relied on the information available to it. Great Plains argued that it had the following information available when making the decision:

- a) Regional forecasted temperatures were moderating.
- b) It was reasonable to assume gas prices to return to more normal levels.
- c) There was a reasonable need to ensure supply flexibility on February 17 given supply curtailments over the previous holiday weekend.
- d) Storage withdrawals had exceeded monthly planned withdrawals and there was a reasonable need to ensure supply flexibility for the remaining winter months for operational reasons.

Great Plains cited prior events where prices had quickly reverted to normal as temperatures moderated as evidence that it had made a reasonable inference when planning for lower prices on February 17 than in fact occurred.

Great Plains also argued that using a 2% reserve margin in calculating the disallowance is not supported by substantial record evidence. Great Plains argued that the Department witness's use of a 2% margin was based on a mistaken interpretation of events and that the actual appropriate reserve margin was between 9.6% and 16%. Great Plains did not believe that pipeline requirements for reserve supply were adequately addressed in the October 19 order.¹ Great Plains provided calculations showing that using a reserve margin of 13%, near the midpoint of the 9.6% to 16% range, would result in a de minimis disallowance of \$344.

3. Relief Requested by Great Plains

Great Plains requested that the Commission grant rehearing, find that the Company's storage decisions and curtailment decisions were reasonable, and that the Commission find that the record in this proceeding establishes that all extraordinary gas costs were prudently incurred, and no disallowance is reasonable or appropriate.

IV. Answer to Relief Requested by Great Plains

A. Department of Commerce

The Department of Commerce answer to the Great Plains request takes two basic tracks. First, the Department argued that Great Plains fails to raise any new issues or new and relevant issues as required by the Commission's reconsideration standard. According to the Department, all of Great Plains arguments have already been rejected in the well-reasoned Order in this docket.

The Department reviewed the decisions made by the Commission and noted that each of the reversals of the ALJ made by the Commission were made based on the record. The Department argued that, as the final decision-maker with the expertise, technical competence, and specialized knowledge, these determinations were well within the scope of the Commission to make. The Administrative Law Judge, on the other hand, is a well-rounded generalist providing recommendations to the Commission. The Commission explained in detail the evidence that warranted departure from the ALJ recommendation in the case of storage decisions and why the Great Plains tariff allowed for economic curtailment.

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

The Department argued that the Commission correctly interpreted Great Plains' tariff. The Department noted that the tariff states that Great Plains has "the right to curtail or interrupt whenever, in the Company's sole judgement, it may

¹ Petition at 14.



be necessary to do so to protect the interest of its customers who capacity requirements are otherwise given priority”.²

This language contains no incongruity and does not limit Great Plains to interruption to protect firm customers from interruption.

The Department argued that Great Plains tried to graft limitations from the priority-of-service provision of the General Term and Conditions into the Interruptible Tariff in order to create a condition on its clear discretion to interrupt customers. The Department noted that the priority-of-service rules, however, are designed to cover emergency interruption of customers who have not agreed to or received a discount for ceasing service when called upon by Great Plains. The Department cited that the interruptible service tariff has its own, separate priority of service section that has no limitation for “operational reasons”. The interruptible service tariff instead contains the “interest of its customers” language cited above.

The Department further argued that Great Plains’ incorrectly invokes the filed rate doctrine. The Department argued that the filed rate doctrine in Minnesota is a protection against collateral attack on filed rates by the judiciary.³ It does not prevent enforcement of a tariff’s language. The Department disagreed with Great Plains’ argument distinguishing the Grain Dryer tariff from the other Interruptible Tariff customers, since the Grain Dryer tariff also does not explicitly allow for economic interruption. Instead, as the Commission observed, the Grain Dryer Tariff does not provide for any additional authority to curtail service to grain dryers beyond that provided to other interruptible tariffs,⁴ despite the requirement that dryers request to come online.

As such, the Department argued that the Commission’s interpretation of Great Plains’ tariffs was sound, does not violate filed-rate doctrine, and should not be reconsidered.

2. Substantial Evidence Supports the Commission’s Decision in View of the Entire Record

² 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>].

³ Department citation *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 44 (Minn. 2009).

⁴ 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/RatesTariffs/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.”).



The Department argued that Great Plains' argument in favor of reversing the Commission decision regarding prudence in maximizing storage relies almost entirely on its own witness's testimony and reaches its conclusion by picking and choosing from the record. This is not how the substantial evidence standard should be applied, according to the Department. The Department argued that the Commission used its expertise to examine the record, weigh the evidence, and come to a reasonable conclusion.

According to the Department, the Commission considered the four points Great Plains raised – moderating temperatures, expectations of more normal gas prices, supply flexibility, and lower storage volumes than planned – thoroughly considered them, found them unpersuasive, and explained why. Applying the prudence standard, the Commission appropriately determined that a reasonable utility would have planned to use all available storage gas to offset spot market purchases.

The Department summarized the record as to why moderating temperatures in Minnesota should not have led a reasonable utility to expect moderating gas prices on February 17th with continuing cold conditions and continuing gas production failures elsewhere in the country. The Department also noted that storage inventories were only minimally below target, not actually low. The Department argued that substantial record evidence supported the Commission determination that Great Plains acted imprudently with regard to its storage decisions on February 17, and the Commission should not reconsider its decision.

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

The Department noted that Great Plains used the same argument to justify a 13% supply margin as it did to justify its supply decision – that prices were expected to moderate. In the Department's estimation, if that view was unreasonable for the supply decision, it was unreasonable for the supply margin decision. The Department cited the Commission order in stating that "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."

As such, the Department argued that the Commission should not reconsider its supply margin decision.

The Department also disagreed with Great Plains' assertion that the Commission Order failed to adequately address the pipeline supply reserve requirements. The Department claimed that Great Plains is arguing that the Commission decision should be considered arbitrary and capricious on this point. This standard is only true if the Commission entirely failed to consider an important aspect of the problem. The Department noted that the Commission considered – and noted in the opinion – supply reserve margins – but reached a different conclusion. Failure to specifically call out this sub-argument from rebuttal does not show arbitrariness. The Department argued that the Commission correctly rejected the argument, and that the 2% supply reserve margin is reasonable and supported by the evidence.

The Department position is that the Commission should deny Great Plains' petition.

B. Office of the Attorney General

The Office of the Attorney General answer to the Petition focused three issues: Application of the correct legal standard, support of the order by substantial evidence, and interpretation of the tariff to allow for economic curtailment.

1. The Commission Applied the Correct Legal Standard

The OAG argued that the Order does not impermissibly rely on hindsight. Instead, the Order correctly relies only on information available to the utility at the time decisions were being made. The analysis explicitly considered what the Utility knew or should have known at the time of their decision, and the OAG believed there is no basis to ask the Commission to reconsider its Order.

2. The Commission Orders are Supported by Substantial Evidence in the Record

The OAG argued that the Commission explained in detail its decision-making, and cited in detail how it decided, for example, on the 2% supply reserve margin. Each disallowance was supported by substantial evidence.

3. Great Plains' Tariff Allows for Economic Curtailment

The OAG noted that a Great Plains employee stated “there could be an argument made that ‘operational reasons’ is gas prices”⁵ and that a case could be made even by Great Plains employees on this record that economic curtailment is valid under the tariff.

The OAG asked the Commission to deny the Petition.

⁵ 6 Ex. 300 at 8–10 (Jacobson Direct).

C. Citizens Utility Board of Minnesota

The Citizens Utility Board of Minnesota made four basic arguments in its answer to the Petition.

First, CUB noted that the Petition raised no new issues. All arguments made were previously raised by the Company prior to the October 19 Order and rejected by the Commission. As such, there is no reason to grant reconsideration.

Second, there is no new and relevant evidence raised in the Petition. All evidence cited was already on the record.

Third, the Petition does not expose any errors or ambiguities in the Order. CUB argued that, contrary to Great Plains assertions, the Commission order evaluates the entirety of the record and reaches a defensible conclusion that the Company's actions were imprudent with respect to economic curtailment, storage utilization, and reserve margins.

CUB specifically notes in regard to each issue:

1. Economic Curtailment

CUB made the same basic arguments regarding Economic curtailment that were made by the Department. CUB cited the same language which provides the Company with the "right...to curtail service to interruptible customers...to advance...customer interest."⁶ CUB also noted that the Commission is the body in the best position to interpret the tariff when its meaning is open to interpretation.⁷ CUB argued also that the distinction that Great Plains tries to draw regarding the Grain Dryer tariff is irrelevant to what is allowed under the interruptible tariff, agreeing with the Department that that tariff provides no authority to curtail beyond that provided in the interruptible tariff.

2. Storage Utilization

CUB argued that the Commission correctly evaluated the price situation for February 17, and that the Company's expectation that prices would moderate was unreasonable. CUB also argued that the Commission's ruling that Great Plains failed to demonstrate that reasonable reliability concerns justified its decision not to maximize its available storage resources on February 17 was correctly reasoned.

⁶ October 19 Order, at 22.

⁷ CUB cites: Hoffman v. N. States Power Co., 764 N.W.2d 34, 50-51 (Minn. 2009).

3. Disallowance Calculations

CUB noted that the Company appeared to be suggesting that any reserve margin that can be “deliberately determined and explainable” is objectively reasonable. CUB argued that this is incorrect. To be prudent, the reserve margin must be reasonable at the time it was selected, “under all the circumstances, and based on the information that was or should have been known”⁸. CUB cited the Commission Order, and argued that Great Plains did not address why a 13% reserve margin was reasonable or justified under the conditions of February 17, and that Great Plains did not demonstrate the reliability risks the Company could have faced justified such a large margin.

4. Burden of Proof

As its fourth point, CUB argued that the Company failed to meet its burden to prove its costs were incurred prudently and would result in just and reasonable rates; therefore, there is no reason to reconsider the Order.

V. Staff Analysis

Staff does not believe any new arguments have been brought forth by any parties through these petitions or answers. All parties arguments essentially re-argue the case as presented to the Commission during testimony, briefs, and in hearing prior to the October 19 Order. Staff is open to reconsideration if the Commission believes it is needed, but has not identified any specific errors of fact, law, or analysis in the original order which need remedy.

VI. Decision Alternatives

Reconsideration

1. Do not reconsider the October 19 Order. (Department, OAG, CUB)
2. Open the October 19 Order for reconsideration. (Great Plains)

⁸ Citation to the October 19 Order, at 5.

Storage

3. Find that Great Plains met its burden to prove it acted prudently with respect to storage and; therefore, allow it to recover the \$439,635 disallowed in the October 19 Order in Order Point 2. (Great Plains primary)

4. Find that a supply reserve margin of 13% on February 17 would have been prudent and; therefore, allow Great Plains to recover all but \$344 of the \$439,635 disallowed in the October 19 Order in Order Point 2. (Great Plains alternate)

Economic Curtailment

5. Find that the Company met its burden to establish it acted prudently in not curtailing its customers for economic reasons and; therefore, allow it to recover the \$405,453 disallowed in Order Point 3. (Great Plains)