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April 24, 2020

The Honorable Ann C. O'Reilly
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: ***In the Matter of the Petition by Great Plains Natural Gas Company, a Division of Montana-Dakota Utilities, Co., for Authority to Increase Natural Gas Rates in Minnesota***
OAH Docket No. 65-2500-36528; MPUC Docket No. G004/GR-19-511

Dear Judge O'Reilly:

Enclosed and filed herewith, find please find the Reply Brief of the Minnesota Department Of Commerce, Division Of Energy Resources.

Sincerely,

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Enclosure

|#4706210-v1

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
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ST. PAUL, MINNESOTA 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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Katie Sieben	Chair
Valerie Means	Commissioner
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Joseph Sullivan	Commissioner
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In the Matter of the Petition by Great Plains Natural Gas Co., a Division of Montana-Dakota Utilities Co., for Authority to Increase Natural Gas Rates in Minnesota

MPUC Docket No. G-004/GR-19-511

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REPLY BRIEF OF THE
MINNESOTA DEPARTMENT OF COMMERCE,
DIVISION OF ENERGY RESOURCES

April 24, 2020

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INTRODUCTION

The Minnesota Department of Commerce, Division of Energy Resources ("Department" or "DER") respectfully submits this Reply Brief ("DER Reply Brief") to the Administrative Law Judge ("ALJ") and the Minnesota Public Utilities Commission ("Commission") pertaining to the petition for a general rate increase filed by Great Plains Natural Gas Co., a Division of Montana Dakota Utilities Co., ("Great Plains" or "Company") for authority to increase natural gas rates in Minnesota. The Department concludes that Great Plains has not shown the reasonableness of the full amount it requests. Regarding issues for which reasonableness has not been shown, the Department continues to rely on the extensive discussion of issues provided in its Initial Brief together with additional response in this Reply Brief to arguments made by the Company and the Office of Attorney General ("OAG"), as follows:

I. Burden of proof in rate cases

II. Financial issues – expenses

III. Return on equity

IV. Basic customer service charges

ARGUMENT

I. BURDEN OF PROOF

Great Plains failed to present evidence demonstrating the reasonableness of certain items it seeks to recover from ratepayers. Further, the Company's Initial Brief purports to shift the burden of proof at certain points.[1] However, as the Department's Initial Brief explained, Great

[1] *See infra* Section II.A (discussing MUI dues expense); Section II.B (discussing incentive compensation expense); Section III.E (discussing flotation costs adjustments).

Plains has at all times the burden to prove that its rate increase request is just and reasonable by a fair preponderance of the evidence.[2]

ALJ Steve M. Mihalchick's 2015 *Monticello Prudency* report provided a detailed discussion of state law regarding a public utility's burden of proof.[3] Relying on longstanding Minnesota Supreme Court precedent,[4] ALJ Mihalchick correctly explained that state law does not give a public utility a presumption of reasonableness that must be overcome by other parties:

> In its 1985 rate case, Xcel argued that once it produced evidence on a particular issue, it had created a "'rebuttable presumption of reasonableness' that could only be overcome by competent evidence in rebuttal." As noted by the Minnesota Supreme Court, the Commission "rejected that contention" because "the company had at all times the burden of proving the proposed rate change." The Supreme Court agreed with the Commission, and stated:
>
> > If there ever existed in this state a presumption to be applied in ratemaking, enactment of Minn. Stat. § 216B.16, subd. 4 (1986) effectively removed any presumption, and placed on the petitioning utility the burden of proving the proposed rate is fair and reasonable[.]
>
> In Minnesota, a utility does not create a presumption of recovery merely by producing evidence. Minn. Stat. § 216B.16, subd. 4, places the burden of proof on the utility, and only on the utility.[5]

Great Plains must prove the facts required to sustain its burden by a fair preponderance of the evidence.[6] The Minnesota Supreme Court has elaborated, "[B]y merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden

[2] Department Initial Brief at 2-3; *see also* Minn. Stat. §§ 216B.03, 216B.16, subds. 4-6 (2018).
[3] *In re Comm'n Investigation into Xcel Energy's Monticello Life Cycle Mgmt./Extended Power Uprate Project & Request for Recovery of Cost Overruns*, MPUC Docket No. E-002/CI-13-754, (*Monticello Prudency*), FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS at 34-36, (February 2, 2015) (MONTICELLO REPORT).
[4] *In re Pet. of N. States Power Co. for Auth. to Change its Schedule of Rates for Elec. Serv. in Minn.*, 416 N.W.2d 719 (Minn. 1987) (*In re N. States Power Co.*).
[5] MONTICELLO REPORT at 35 (quoting *In re N. States Power Co.*, 416 N.W.2d at 725).
[6] *In re N. States Power Co.*, 416 N.W.2d at 722.

of demonstrating it is just and reasonable that the ratepayers bear the costs of those expenses."[7] Moreover, state law requires that any doubt should be resolved in favor of ratepayers.[8]

In this case, the Department concluded that Great Plains did not demonstrate that all of its proposals were reasonable for ratemaking purposes. Having concluded that the Company failed to meet its burden of proof, the Department faced the question of what to do next. A first option was simply to recommend complete disallowance of Great Plains' proposal. A second option, and one that the Department chose in most instances, was to provide an alternative reasonable adjustment, or recommendation, for the Commission to consider.

The Department, for example, proffered an alternative proposal after reviewing Great Plains' flotation costs adjustment.[9] In this instance, the Company documented its public issuance expenses, but not its nonpublic equity issuance expenses. The Department reasonably concluded that it would be inappropriate for Great Plains to recover flotation costs that it cannot demonstrate it incurred. However, rather than recommend that the Company's full flotation costs adjustment be disallowed, the Department recommended a downward adjustment that recognizes Great Plains likely has incurred some flotation costs even if the exact amount has not been shown.

The fact that the Department recommended this adjustment and other alternatives to complete disallowance, or, rejection of a Great Plains' request, does not mean that the burden of proof has shifted to the Department. The Company bears the burden to demonstrate that

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[7] *Id.* at 722–23.

[8] Minn. Stat. § 216B.03 ("[E]very rate made, demanded, or received by a public utility . . . shall be just and reasonable. . . . Any doubt as to reasonableness should be resolved in favor of the consumer.").

[9] *See infra* Section III.E.

each of its proposals is just and reasonable.[10] Again, any doubt as to whether the Company has made that showing must be in favor of the consumer."[11]

II. Financial Issues – Expenses

This Department Reply Brief responds to the Company's Initial Brief as to the following disputed test year expenses:[12]

A. Minnesota Utilities Investor Association Dues
B. Incentive Compensation Not Paid
C. Rate Case Expenses Not Incurred

A. Dues to Minnesota Utilities Investor Association ("MUI")

The Department's testimony and Initial Brief identified concerns regarding the Company's proposed test-year expenses for dues payable to the Minnesota Utility Investors Association ("MUI"). According to Great Plains, MUI's purpose is to represent the interests of Minnesota utility companies' existing shareholders, and whose principal objective "is to enhance the voice and impact of utility shareholders in the development of federal, regional and state legislative and regulatory policy"[13] and whose purpose, according to the MUI is to "represent[] the interests of utility shareholders."[14]

To include these MUI dues in test-year expenses, the Company would have needed to present evidence sufficient to satisfy its burden of proving that the amount and purpose of the MUI organizational dues expense is reasonable and in the best interests of the utility's

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[10] Minn. Stat. § 216B.16, subd. 4; *In re N. States Power Co.*, 416 N.W.2d at 724-726 (concluding that a utility does not enjoy at any point in a rate case proceeding a rebuttable presumption of reasonableness that other parties must overcome).
[11] Minn. Stat. § 216B.03.
[12] Great Plains Initial Brief at 30-37; *see also* Ex. DER-14 at 14-15 (Byrne Surrebuttal), Ex. DER-15 at 4-8 (Lusti Surrebuttal), Ex. DER-21 (Byrne Summary Statement), Ex. DER-22 (Lusti Summary Statement).
[13] Ex. GP-21, TRJ-1 at 3 (Jacobson Direct); Ex. DER-6 at 8 (Byrne Direct).
[14] Ex. OAG-2 at 8-9 (Lebens Surrebuttal).

ratepayers.[15] Great Plains did not present such evidence. Instead, after the Department's direct testimony articulated its concern about the proposed MUI dues, the only factual evidence that the Company offered in rebuttal to satisfy its burden of proof were two statements of Mr. Jacobson, that MUI "focuses on legislation and regulatory policy that impacts utilities and, directly and indirectly, impacts utility customers" and that Great Plains had already reduced the dues expense amount by 35 percent to reflect the portion of the annual MUI dues that was "related to lobbying."[16] Mr. Jacobson, however, did not explain how expenses for MUI's "legislation and regulatory policy" efforts differed from its expenses for "lobbying" efforts. He provided no documentation to support his statements, not even a calculation showing the exclusion of the 35 percent lobbying expenses.[17] He did not deny that membership is open only to current shareholders nor that MUI's activities do not involve activity beneficial to Great Plains such as recruiting equity investors, providing finance-related services to Great Plains, or otherwise reducing financing costs for the regulated utility.[18] He simply failed to present evidence to satisfy the Company's burden to demonstrate that the activities of the MUI organization benefit ratepayers and fall within the boundaries described in the Commission's Statement of Policy on Organizational Dues, under which the Commission does not impose on customers dues to organizations that have not been shown to provide customer benefit, "as may be the case when the organizations are lobbying . . . in purpose[.]"[19] It is apparently the Company's hope that the Commission will determine that shareholders' "legislative and regulatory policy" efforts should

[15] Ex. DER-14 at 8-9, ACB-S-1 (Byrne Surrebuttal) (STATEMENT OF POLICY ON ORGANIZATION DUES (MPUC June 14, 1982)).
[16] GP Ex. 23 at 2-3 (Jacobson Rebuttal).
[17] Ex. DER-14 at 7 (Byrne Surrebuttal).
[18] *Id.* at 8.
[19] *Id.* at 9.

be presumed – by definition, and in the absence of any supporting evidence – to benefit customers. There is no basis for such a presumption that relieves the Company of its burden of proving the reasonableness of its proposed rate increase.

In its Initial Brief, Great Plains argued, in the alternative, that a recovery of at least 50 percent of the MUI dues should be allowed because, in some cases, the Commission has allowed 50 percent recovery of the investor expenses that utilities proposed to be included in base rates.[20] As the Department's testimony and Initial Brief discussed, these cases are inapposite because the types of expenses at issue were costs for maintaining shareholder records and recruiting equity capital, activities that benefited ratepayers by keeping utility financing at a favorable cost, and other typical investor relations costs, such as the annual shareholders' meeting, that benefited only the shareholders.[21] In such circumstances, if the utility does not provide a detailed breakdown of the individual costs within the investor relations category, the Commission has denied 50 percent of recovery as a way to acknowledge shareholder benefit.[22] This sort of past practice for dealing with typical investor relations expenses is not a blanket policy allowing ratepayers to be charged for fifty percent of <u>any</u> expense pertaining to investors. In the absence of the Company demonstrating a benefit to ratepayers, it is not appropriate to allow fifty percent of the Company's proposed test year expense for MUI dues.

Because Great Plains did not substantiate that its proposed amount is accurate, properly excludes lobbying costs,[23] or provides benefit to customers, the Department continues to recommend exclusion of the MUI organization dues from the Company's 2020 test-year

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[20] Great Plains Initial Brief at 32.
[21] Ex. DER-6 at 9-10 (Byrne Direct), Ex. DER-14 at 8 (Byrne Surrebuttal).
[22] Ex. DER-6 at 9-10 (Byrne Direct) (citations omitted).
[23] Ex. DER-14 at 10 (Byrne Surrebuttal, Ex. DER-21 (Byrne Summary Statement).

expenses.[24] The impact of this recommendation reduces test-year operations and maintenance ("O&M") expenses (of which organizational dues expense is a part) by $11,500.[25]

B. Incentive Compensation Not Paid

In its testimony and Initial Brief, Great Plains took issue with the Commission's longstanding practice of requiring investor-owned utilities to track, report, and return unpaid incentive compensation to ratepayers. As discussed in the Department's testimony and Initial Brief, the Company failed to demonstrate that it is unique among investor-owned utilities in Minnesota, such that it should be excused from filing an annual incentive compensation report and from refunding incentive compensation the Company does not pay to employees to ratepayers.

The Commission has required Minnesota's investor-owned regulated utilities, including Xcel Energy, Minnesota Power, and CenterPoint Energy to track payment of incentive compensation, file annual incentive compensation reports, and refund amounts charged to ratepayers but not actually paid under their incentive compensation programs.[26] As the Department's testimony demonstrated, it is appropriate that the same practice now be applied in the case of Great Plains because Great Plains in the recent past recovered from ratepayers amounts for incentive compensation that were subsequently retained by the Company and not paid to employees, and it is not reasonable to build over-recoveries into base rates.[27]

The Company's Initial Brief and its rebuttal testimony characterized the Commission's practice of requiring annual incentive compensation reports and refunds as a "non-reciprocal,

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[24] Ex. DER-6 at 10, ACB-3 (Byrne Direct).
[25] Ex. DER-6, ACB-3 (Byrne Direct); Ex. DER-14 at 10 (Byrne Surrebuttal).
[26] Ex. DER-7 at 10-12 (Lusti Direct) (citations omitted).
[27] *Id.* at 12 (*citing In re Appl. of Great Plains Nat. Gas Co., a Div. of MDU Res. Grp., Inc. for Auth. to Increase Rates for Nat. Gas Serv. in Minn.*, MPUC Docket No. G004/GR-15-879, Lusti Direct at 4-5 (Feb 23, 2016).

single-issue" rate making practice that should not be applied to Great Plains. The Commission does not consider the filing of annual incentive compensation reports or making refunds to be unreasonable.[28] Nothing in the Company's testimony or arguments demonstrated a reason for the Commission to abandon its long-standing practice.

Great Plains' Initial Brief also argued that the Commission should refrain from applying its long-standing practice to Great Plains because the Commission's practice is based on a strong disapproval of a "Company's retention of the right not to make incentive payments earned under the plan," which the Commission views "as an inappropriate transfer of risk from shareholders to ratepayers and as inconsistent with the test year concept on which rates are based."[29] Great Plains' Initial Brief places much weight on the phrase "earned under the plan," and it argues that the Commission should find it reasonable for utilities to collect incentive compensation funds from ratepayers and thereafter to retain them whenever the utility determines that incentive compensation is not subsequently "earned" by employees. The Company's Initial Brief implied that Great Plains' past failure to pay incentive compensation, while simultaneously collecting those sums in base rates, is an entirely reasonable practice that the Commission should endorse for the future.[30]

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[28] *Id*. at 6 (Lusti Surrebuttal).

[29] Great Plains Initial Brief at 36 (citing *In re Appl. N. States Power Co. for Auth. to Increase its Rates for Elec. Serv. in the State of Minn.,* MPUC Docket No. E-002/GR-92-1185, ORDER AFTER RECONSIDERATION at 7-8 (January 24, 1994)).

[30] Great Plains' Initial Brief further argues that the burden to establish whether incentive compensation was earned or unearned should be shifted to the Department:

> Mr. Lusti mistakenly assumes that in 2015 Great Plains achieved the incentive compensation metrics under its plan, but a decision was nevertheless made to forego paying the incentive. As Mr. Lusti noted at hearing, however, he does not know why incentive compensation was not paid in 2015[.]

(Footnote Continued on Next Page)

The Department disagrees. Ratepayers whose rates include an amount for incentive compensation do not care why Great Plains is not paying employees sums that the customer has paid to Great Plains.[31] When incentive compensation has been built into base rates and collected from ratepayers, but not paid to employees, sums should be refunded, and a report is the Commission's method for determining whether a refund is appropriate. It is inappropriate to build into base rates a utility's right to over-earn.

C. Rate Case Expenses Not Incurred

The Commission's treatment of unpaid rate case expenses, as can be seen in Great Plains' most recent past rate case, requires utilities to credit any over-recovery to future rate case revenue requirements.[32] In Great Plains' last case, for example, the Commission ordered Great Plains to use a four-year amortization period for its rate case expenses, and track any over-recovery for credit to the revenue requirement in its next rate case. This requirement should be continued.

The Company's Initial Brief argues that the Commission should no longer apply to Great Plains its practice of crediting any over-recovery to future rate case revenue requirements because, according to Great Plains, all rate case expenses included in rates, but not paid in a year and therefore over-recovered, are "almost certainly" offset by increases in other expenses.[33] The only evidence the Company offered to support this asserted near certainty of an increase in other

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(Footnote Continued from Previous Page)
Great Plains Initial Brief at 36. The Company offered no evidence to establish why it simply retained the incentive compensation it had collected from ratepayers but failed to actually pay to employees.

[31] Evidentiary Hearing Transcript at 46 (Mar. 10, 2020).

[32] *In re Pet. by Great Plains Nat. Gas Co., a Div. of MDU Res. Grp., Inc., for Auth. to Increase Nat. Gas Rates in Minn.*, MPUC Docket No. G004/GR-15-879, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at point 8 (September 6, 2016).

[33] Great Plains Initial Brief at 34.

expenses is the casual observation that when the Company in the past has chosen to file an application for rate increases, the Commission has allowed some increase.[34] The Company, however, has exclusive control over the timing of its rate cases, and bears the burden of proving its test year expenses. It would be inappropriate for the ALJ to presume from this record that Great Plains' expenses will continually increase in the future, beyond the amounts the Company demonstrated in its rate case application – and build in some amount of over-recovery to account for that possibility, thereby relieving the Company of its burden of proving the reasonableness of its rates.

The Department disagrees that the Commission should modify or discontinue this practice because creation of a "cushion" for over-recovery is not reasonable, and nothing in the instant case materially distinguishes Great Plains' instant case from its past cases. Consistent with the Commission's existing practice, the Department recommends that Great Plains continue to be required to track any over-recovery of rate case expenses, and to credit the excess amount it collects to the revenue requirement in Great Plains' next rate case.[35]

III. RETURN ON EQUITY ("ROE")

A. Introduction

Great Plains' Initial Brief argued that the Company must have a 10.2 percent return on equity ("ROE") to induce investment in its regulated operations.[36] Great Plains' proposal is unreasonable.[37] Indeed, Company witness Ms. Ann Bulkley's own analysis shows that a 10.2

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[34] *Id.*
[35] Ex. DER-7 at 14 (Lusti Direct); Ex. DER-15 at 7-8 (Lusti Surrebuttal); Ex. DER-22 (Lusti Summary Statement).
[36] Great Plains Initial Brief at 6-9.
[37] The Department's Initial Brief provided extensive ROE analysis including why Great Plains' proposal is unreasonable. The Department's Reply Brief will only respond to a few specific ROE issues.

percent authorized ROE would be higher than any other ROE authorized in the United States for a gas distribution utility in the last two years.[38] To reach its 10.2 percent proposal, Great Plains was forced to rely on results-oriented analysis rather than sound principle. Among other errors, Great Plains' ROE analyses suffer from the following defects:

(1) Ms. Bulkley unreasonably inflated her Discounted Cash Flow model results by including companies that failed the proxy group screening and by using an extreme earnings growth rate estimate in her analyses;

(2) Ms. Bulkley contradicted her own market volatility concerns by failing to update her own ROE recommendation even as she criticized Department witness Mr. Craig Addonizio's surrebuttal testimony for not addressing changes that occurred after his analysis was completed;

(3) Ms. Bulkley selectively considered qualitative risk factors, which the Commission rejected in Great Plains' last rate case, to make unspecified upward ROE adjustments;

(4) Great Plains impermissibly shifted the burden of proof to the Department in order to recover flotation costs unsupported by the record; and

(5) Great Plains inaccurately asserted that Mr. Addonizio provided a recommended return on equity range in his testimony.

Each of these issues is considered below.

B. Great Plains' Discounted Cash Flow ("DCF") Analyses Are Inflated by Unreasonable Inputs

Ms. Bulkley inflated her DCF model results by including South Jersey Industries ("South Jersey") and NiSource, Inc. ("NiSource") in her proxy group.[39] Additionally, Ms. Bulkley's decision to include Value Line's 27.0 percent earnings growth rate for Northwest Natural Holding Company ("Northwest Natural") dramatically and unreasonably increased Great Plains'

[38] Ex. GP-16 at 12 (Bulkley Rebuttal). Mr. Addonizio explained that authorized ROEs from other jurisdictions and authorized ROEs that are more than few months old have little relevance. Ex. DER-9 at 69-71 (Addonizio Surrebuttal); Department Initial Brief at 46-49.
[39] Ex. GP-14 at 43 (Bulkley Direct).

proposed ROE. The Company also asserted that Mr. Addonizio improperly excluded these inputs from his DCF analyses.[40]

It is not reasonable to include South Jersey and NiSource in Great Plains' proxy group because both companies failed the screens employed by Ms. Bulkley and Mr. Addonizio. The Department and Great Plains both required that potential proxy group companies obtain at least 60 percent of their operating income from regulated gas distribution operations during the most recent three years for which data is available.[41] It is undisputed that South Jersey failed to obtain 60 percent of its operating income from regulated gas distribution operations in 2017 and 2018 (two of three relevant years).[42] It is similarly undisputed that NiSource failed to obtain 60 percent of its operating income from regulated gas distribution operations in 2018.[43] Despite imposing this income requirement, Ms. Bulkley made exceptions for South Jersey and NiSource.

It is needlessly speculative to include South Jersey and NiSource in the proxy group, as Ms. Bulkley did, because they might meet the income screening requirement at some point in the future. The relevant inquiry, based on the criteria established by both Ms. Bulkley and Mr. Addonizio, is how South Jersey and NiSource performed during the look back period. It makes little sense to have proxy group screening requirements merely to ignore them; particularly,

[40] Ex. GP-16 at 27 (Bulkley Rebuttal); Great Plains Initial Brief at 21.

[41] Ex. GP-14 at 42 (Bulkley Direct); Ex. DER-1 at 13 (Addonizio Direct).

[42] Ex. DER-9 at 6-7 (Addonizio Surrebuttal) (stating that South Jersey's operating income "from regulated gas distribution operations was . . . less than 60 percent [in 2017 and 2018]"); Ex. GP-16 at 21-22 (Bulkley Rebuttal) (acknowledging that South Jersey's "percentage was below 60 percent . . . in 2017 and 2018[.]").

[43] Ex. DER-9 at 13 (Addonizio Surrebuttal) (stating that NiSource "failed my operating income test . . . based on an average of NiSource's percentage operating income derived from regulated gas distribution operations during its three most recent fiscal years.); Ex. GP-16 at 23 (Bulkley Rebuttal) ("NiSource's percentage of operating income from natural gas distribution operations was below 55 percent . . . [in] 2018[.]").

when other suitable proxy companies exist. Mr. Addonizio explained that including marginal companies can undermine the overall proxy group's validity:

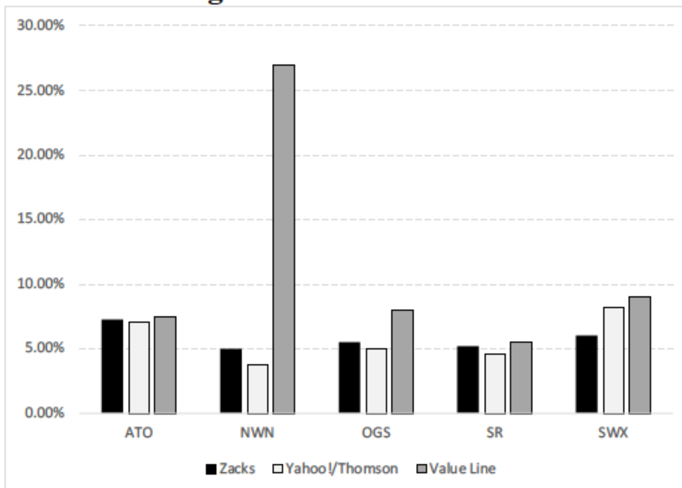
> Including companies that may not be reasonable proxies for a target utility raises the risk of unreasonably biasing the analysis results. The more conservative approach of excluding questionable companies ensures that only companies that are reasonable proxies make it into the proxy group.[44]

Great Plains' position that it may include South Jersey and NiSource in the proxy group after they failed a screening requirement is unreasonable. It is inconsistent with the purpose of having screening requirements and either company's inclusion could tarnish the proxy group results.

Ms. Bulkley also engaged in results-based analysis by using Value Line's 27.0 percent earnings growth rate for Northwest Natural to estimate Great Plains' expected growth rate. Value Line's 27.0 percent earnings growth rate is five times higher than any other estimate for Northwest Natural and three times higher than the next highest single estimate for any other proxy company.[45] As shown in Figure 1, it is immediately obvious that Value Line's earnings growth rate is unrepresentative of Northwest Natural's generally expected performance and is out of step with industry growth:

[44] Ex. DER-9 at 10 (Addonizio Surrebuttal).
[45] *Id.* at 31.

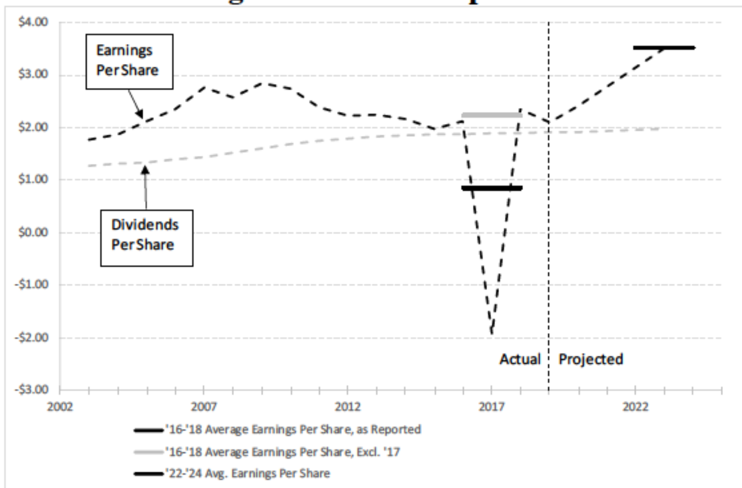
Figure 1 – DER Proxy Group
Earnings Growth Rate Estimates[46]



Mr. Addonizio testified that this earnings growth estimate was caused by Northwest Natural's decision to write off a poorly performing asset in 2017, coupled with stable earnings in 2016, 2017, and 2018.[47] Figure 2 below shows how this balance sheet change caused Northwest Natural's earnings per share to experience a dramatic one-year fluctuation largely independent of its underlying business activities.[48] Mr. Addonizio explained that the other earnings growth rates for Northwest Natural appear to account for this balance sheet change, as shown in Figure 1, and provide a more accurate estimate of the company's future earnings.[49]

[46] Ex. DER-9 at 35 (Addonizio Surrebuttal); Ex. DER-9, CMA-S-6 (Addonizio Surrebuttal).
[47] Ex. DER-9 at 18 (Addonizio Surrebuttal).
[48] Ex. DER-1, CMA-24 at 22 (Addonizio Direct).
[49] Ex. DER-1 at 21-22 (Addonizio Direct) ("Zacks and Thomson reported expected earnings growth rates of 5.00 percent and 3.75 percent, respectively. . . . [I]t seems clear that both Zacks and Thomson removed the impact of [Northwest Natural's] write down of the Gill Ranch Facility from their forecasts.").

Figure 2 – Northwest Natural's Earnings and Dividends per Share[50]



Even when two-growth DCF analysis is employed, Value Line's 27.0 percent earnings growth rate dramatically increases the Department's analysis results – by more than 140 basis points – to 10.26 percent.[51] It is unreasonable to inflate Great Plains' authorized ROE based on an extreme outlier that is divorced from actual company earnings.

C. Great Plains' Contradictory Treatment of Stock Market Volatility

In addition to including inappropriate proxies and growth rates, Ms. Bulkley's results-oriented analysis is illustrated by her inconsistent treatment of recent stock market volatility. Ms. Bulkley initially argued that mechanisms should be used to dampen the impact of market volatility on DCF analyses.[52] Specifically, Ms. Bulkley's rebuttal testimony advocated for the use of longer averaging periods to reduce the impact of stock market volatility on expected divided growth rate calculations. Ms. Bulkley reasoned that short-term market reactions "have a direct effect in the share prices used to calculate the DCF model." Ms. Bulkley concluded that

[50] Ex. DER-1, CMA-24 at 22 (Addonizio Direct).
[51] Ex. DER-9 at 34 (Addonizio Surrebuttal) ("[T]he two-growth model does not mitigate the effects of extreme outliers . . . because all growth rates, even those ultimately determined to be unsustainable, are used to calculate the range of sustainable growth rates.").
[52] Ex. GP-16 at 33 (Bulkley Rebuttal).

averaging periods should be set to "ensure that the effect of anomalous events on the results of the analyses is minimized."[53]

Mr. Addonizio, consistent with Ms. Bulkley's concerns, minimized the impact of market volatility on his surrebuttal DCF results. Mr. Addonizio completed his analysis on February 13, 2020.[54] The market volatility that Ms. Bulkley highlighted at length in her witness summary statement occurred in late February and early March 2020.[55] In this way, Mr. Addonizio's timely completion of his surrebuttal analyses dampened the impact of market volatility on the Department's recommended ROE.[56]

Yet, in her witness summary, Ms. Bulkley contradicted her own rebuttal testimony methodology by criticizing Ms. Addonizio's surrebuttal testimony for not accounting for recent market changes.[57] This criticism is unwarranted for several reasons. First, it is inconsistent with Ms. Bulkley's own rebuttal testimony recommendation to minimize volatility. Second, it would have been impossible for Mr. Addonizio to incorporate market changes that occurred after he timely completed his surrebuttal analyses. Third, in another contradiction, Ms. Bulkley failed to make any change to her original September 2019 ROE recommendation to account for any subsequent market changes.[58]

As discussed in the Department's Initial Brief and above, Mr. Addonizio's DCF analyses appropriately balance market volatility risks with the danger of including market price

[53] *Id.*
[54] Ex. DER-23 at 1 (Addonizio Response to Bulkley Summary Statement).
[55] Ex. GP-17 at 3-4 (Bulkley Summary Statement).
[56] Ex. DER-23 at 1 (Addonizio Response to Bulkley Summary Statement).
[57] Ex. GP-17 at 3-4 (Bulkley Summary Statement).
[58] *Compare* Ex. GP-14 at 109 (Bulkley Direct), *with* Ex. GP-17 at 14 (Bulkley Summary Statement).

information that is too old to be relevant.[59] In contrast, Ms. Bulkley failed to either update her own ROE recommendation or propose a consistent methodology for conducting DCF analyses. This inconsistency is unreasonable. For these reasons, the Commission should adopt the Department's 8.82 percent recommended ROE.

D. Great Plains' Selective Consideration of Qualitative Risks

Another way that Great Plains reached for the highest ROE authorized in the United States for a gas distribution utility in the last two years was by selectively considering qualitative risk factors. Ms. Bulkley specifically considered Great Plains' size, customer concentration, capital expenditures, and regulatory environment.[60] Based on these self-selected risk factors, Ms. Bulkley made unspecified upward adjustments to the Great Plains' proposed ROE.[61] These adjustments are unreasonable.

First, Ms. Bulkley's assumption that Great Plains is riskier than the proxy group companies because of its size is unsupported. Ms. Bulkley failed to cite any academic or financial institution research to support her position that it is well-established that smaller companies experience a size effect.[62] Mr. Addonizio explained that the size effect theory remains a matter of debate.[63] According to Cass Business School Finance Professor Mario Levis:

> [I]t is fair to say that, after almost 20 years of its discovery, the underlying logic and sometimes the practical significance of the so-called 'size effect' still remains a matter of debate.[64]

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[59] Department Initial Brief at 38.
[60] Ex. GP-14 at 80-106 (Bulkley Direct).
[61] *Id.* at 92-93 (Bulkley Direct); Ex. DER-9 at 65 (Addonizio Surrebuttal).
[62] Ex. GP-14 at 80 (Bulkley Direct); Ex. DER-1 at 65 (Addonizio Direct).
[63] Ex. DER-1 at 65-67 (Addonizio Direct).
[64] Ex. DER-1, CMA-22 at 2 (Addonizio Direct) (Mario Levis, *The Record on Small Companies: A Review of the Evidence*, 2 J. OF ASSET MGMT. 368, 369 (2002)).

Moreover, unlike competitive market firms, public utilities like Great Plains benefit from regulatory support and monopoly service territories that lessen the impact of market volatility.[65] Thus, utilities may be less impacted to the extent that a size effect even exists.[66]

Second, Ms. Bulkley concluded that Great Plains' customer concentration makes it riskier than the proxy group. Yet, this conclusion is inconsistent with the fact that four other companies in Ms. Bulkley's proxy group also rely heavily on industrial customers.[67] Additionally, the same regulatory support that cushions Great Plains against size-related risks also reduces the Company's customer concentration risks. To that end, Great Plains has availed itself of regulatory support in this proceeding. The Company has proposed to continue its Revenue Decoupling Mechanism (RDM) and to implement a Margin Sharing Mechanism.[68] These sorts of tools are not available to competitive market businesses. Yet, they allow Great Plains to continue recovering costs even when the broader economy declines.

Third, Ms. Bulkley concluded that Great Plains is riskier than her proxy group based on only two of her risk factors: size and customer mix. And, as discussed above, Ms. Bulkley failed to provide adequate support for these conclusions. For her last two factors, capital expenditures and regulatory support, Ms. Bulkley found that Great Plains is not riskier than the proxy group.[69] It is unreasonable to make unspecified upward ROE adjustments when – at best – only two out of four factors selected by the Company support its position. This upwards departure lacks

[65] Ex. DER-1 at 65-68 (Addonizio Direct); DER-9 at 65-66 (Addonizio Surrebuttal).
[66] Ex. DER-1 at 67 (Addonizio Direct).
[67] Ex. DER-1 at 69 (Addonizio Direct); Department Initial Brief at 74 ("Ms. Bulkley's own proxy group
included four other companies with industrial and commercial delivery percentages greater than sixty percent.").
[68] *See generally* Ex. GP-31 at 10-11 (Bosch Direct); Ex. GP-32 at 4-9 (Bosch Rebuttal); Ex. GP-28 (Fischer Direct); Ex. GP-29 at 3-4 (Fischer Rebuttal).
[69] Ex. DER-1 at 64 (Addonizio Direct).

support because it is unclear exactly what adjustments were made, how the qualitative risk factor analysis is relevant, and whether qualitative risk factor analysis even supports such changes.

Relatedly, Great Plains' Initial Brief criticized the Department for failing to consider these risk factors. Yet, Mr. Addonizio devoted at least ten pages of his direct and surrebuttal testimonies to explaining why it is inappropriate and unnecessary to engage in a qualitative analysis of risk factors self-selected by the analyst.[70] Mr. Addonizio explained that an analyst must conduct in-depth micro-analyses of all of the individual business and financial risk factors to reasonably compare the risk profiles of different companies because each utility faces a unique set of risk factors.[71] ROE analysis is best conducted using tools like the Commission's preferred DCF methodology.[72]

Great Plains also relies on the Commission's May 2017 Order addressing Otter Tail Power Company's ROE to buttress its claim that qualitative risk factors should be considered.[73] Yet, the Commission's consideration of unique circumstances in Otter Tail's electric rate case does not mandate such consideration here. Indeed, in Great Plains' last rate case, the Commission reasoned that such adjustments are subjective and undermine the DCF analysis:

> The Company adjusted its DCF results upward to reflect business risks it said were unique to the Company, setting it apart from the companies in its proxy group: its small size, a lack of geographic diversity in its service area, a lack of economic diversity in its service area, and a lack of diversity in its customer base. The Commission concurs with the Department and the ALJ that these risks—

[70] *Id.* at 64-72; Ex. DER-9 at 65-67 (Addonizio Surrebuttal).
[71] Ex. DER-1 at 63-64 (Addonizio Direct).
[72] Ex. DER-1 at 35 (Addonizio Direct) (citing *In re Appl. of CenterPoint Energy Res. Corp. d/b/a CenterPoint Energy Minn. Gas for Auth. to Increase Nat. Gas Rates in Minn.*, MPUC Docket No. G008/GR-15-424, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 38 (June 3, 2016) ("CenterPoint 2016 Rate Case")).
[73] Great Plains Initial Brief at 24. *In re Appl. of Otter Tail Power Co. for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-017/GR-15-1033, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 55 (May 1, 2017).

> together with all company-specific strengths—have been subsumed into the mix of characteristics of the companies in the proxy groups and that adjusting for isolated, company-specific characteristics cutting only in favor of a higher return would improperly skew the DCF analysis.
>
> The proxy groups used in this case were carefully vetted, using objective criteria such as credit ratings and percentage of revenues drawn from specific business lines, to ensure their overall comparability to Great Plains. Making additional adjustments at this point for the characteristics cited by the Company would be likely to result in double-counting.[74]

As a result, the Commission concluded:

> In short, it would disrupt the workings and compromise the results of the DCF model by inserting subjective judgments at a stage that is designed to be free of them.[75]

Mr. Addonizio's conclusion that Ms. Bulkley's qualitative analysis of additional risk factors was unnecessary and unreasonable is consistent with past Commission practice. More precisely, Mr. Addonizio's conclusion matches how the Commission treated Great Plains' last attempt to adjust its ROE based on subjective judgments. For these reasons, Great Plains' qualitative risk factor analysis is unreasonable and should be rejected.

E. Great Plains' Flotation Costs Adjustment Lacks Support

Great Plains must show that its proposed flotation costs adjustment is reasonable by a fair preponderance of the evidence.[76] The Company also cannot create a rebuttable presumption of reasonableness. Great Plains has "at all times the burden of proving the proposed rate change."[77]

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[74] *In re Pet. by Great Plains Nat. Gas Co., a Div. of MDU Res. Grp., Inc., for Auth. to Increase Nat. Gas Rates in Minn.*, Docket No. G-004/GR-15-879, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 24 (Sept. 6, 2016).

[75] *Id.; see also* CenterPoint 2016 Rate Case at 42-43 (accepting the ALJ's recommendation to reject CenterPoint's ROE adjustment based on company size and current economic conditions); *In re Appl. of Minn. Energy Res. Corp. for Auth. to Increase Rates for Nat. Gas Serv. in Minn.*, MPUC Docket No. G-011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 26 (Oct. 31, 2016) (rejecting the use of company-specific risk factors).

[76] *In re N. States Power Co.*, 416 N.W.2d 719 at 722.

[77] *Id.* at 725.

Despite this obligation, the Company's Initial Brief impermissibly shifted the burden of proof to the Department. Great Plains stated:

> Mr. Addonizio's proposed adjustment is unsupported. . . . Mr. Addonizio failed to provide support for his conclusion that adjusting the flotation cost percentage by 50 percent is reasonable . . . . Simply, the Department's recommendation to reduce the flotation cost adjustment by 50 percent is not reasonable and should be rejected by the Commission.[78]

Yet, Mr. Addonizio recommended this adjustment because Great Plains failed to fully document the flotation costs that it incurred. Mr. Addonizio reasonably concluded that it would be inappropriate for the Company to recover flotation costs that it cannot document.[79] The downward adjustment recommended by Mr. Addonizio recognizes that Great Plains likely has incurred some equity issuance expense without taking the Company's undocumented assertion as an article of faith. To the extent that Mr. Addonizio's adjustment could be more precise, it results from Great Plains' failure to keep or produce accurate records for its nonpublic equity issuances.

If the Company believes that its entire flotation cost adjustment is reasonable, then it should have produced the evidence necessary to support its position. In this instance, Great Plains acknowledged that it incurred costs from both public and nonpublic equity issuances. Specifically, the Company stated that Great Plains' parent company, MDU Resources Group, had obtained equity through an employee dividend reinvestment program.[80] Dividend reinvestment programs are a type of nonpublic equity issuance. Rather than provide actual cost information, Great Plains provided an employee pamphlet that states, "The cost to reinvest your

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[78] Great Plains Initial Brief at 29-30.
[79] DER-9 at 64 (Addonizio Surrebuttal).
[80] Ex. GP-16 at 66-68 (Bulkley Rebuttal).

dividends is paid for by MDU."[81] This pamphlet does not illuminate Great Plains' actual nonpublic equity issuance expenses or the amount of equity raised from the dividend reinvestment program. It therefore cannot support Great Plains' conclusion that its full flotation cost adjustment is justified.

It is unreasonable for Great Plains to recover costs that it cannot meaningfully estimate; particularly given that the Company acknowledged that it has incurred nonpublic equity issuance expenses and that those issuances are less expensive than public equity issuances.[82] Additionally, the Commission should reject the Great Plains' attempt to shift its burden of proof to the Department.

F. The Department Did Not Recommend an ROE Range

Finally, Great Plains' Initial Brief inaccurately asserted that Mr. Addonizio provided a recommended return on equity range in his testimony.[83] Mr. Addonizio's surrebuttal testimony stated, "I recommend an ROE of 8.82 percent, and an overall rate of return of 6.76 percent for Great Plains."[84] Consistent his pre-filed testimony, Mr. Addonizio testified during cross-examination that he was not recommending an ROE range:

> Q. Okay. Thank you. Mr. Addonizio, your recommended return on equity of 8.82 percent is based on the mean average of your two-growth DCF analysis; is that correct?
>
> A. That's correct.
>
> Q. Before your two-growth DCF analysis, you show a reasonable -- a range of reasonable return on equity of between 7.9 percent and 9.67 percent; is that correct?

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[81] *Id.*; Ex. DER-9 at 63 (Addonizio Surrebuttal).
[82] Ex. GP-16 at 67 (Bulkley Rebuttal) ("Internal sources of equity, including dividend reinvestment and/ or employee stock option plans, are . . . typically less expensive[.]" (quoting ROGER A. MORIN, NEW REGULATORY FINANCE 334 (Pub. Util. Reps. 2006)).
[83] Great Plains Initial Brief at 9.
[84] Ex. DER-9 at 80 (Addonizio Surrebuttal).

A. I do not agree with that statement.

Q. What do you not agree with?

A. I don't think that full range represents a reasonable range of results. . . . For each of the companies in the proxy group there are equity analysts who have earnings growth projections that are low enough that they would yield a 7.9 percent two-growth DCF result average for Great Plains. On the flip side, on the high side, if we use -- there are representative equity analysts that believe that the growth prospects for the proxy companies are good enough that -- or I should say bad enough that's the two-growth DCF yield of 9.67 percent. I do not agree that that full range is reasonable, that my recommendation of a reasonable ROE is the 8.82 percent.[85]

Accordingly, the Department does not recommend an ROE range. The Department instead recommends that the Commission adopted an 8.82 percent ROE for Great Plains, as discussed in Mr. Addonizio's testimony.

IV. BASIC CUSTOMER SERVICE CHARGES

A. Residential and Small Firm General Service Customer Charges

Department witness Mr. Michael Zajicek testified that Great Plains' proposed increases to the residential and small firm general service customer charges were reasonable.[86] The OAG's Initial Brief argued that Great Plains' residential and small firm general service customer charges should remain unchanged.[87] The Department briefly clarifies two characterizations of Mr. Zajicek's relevant testimony below. The OAG Initial Brief stated:

> Department witness Mr. Michael Zajicek agrees that leaving the residential charge at $7.50 would encourage energy conservation, calculating that maintaining the charge would result in a 0.67 percent decrease in residential energy usage, all else being equal.[88]

[85] Evidentiary Hearing Transcript at 58-59 (Mar. 10, 2020).
[86] Ex. DER-8 at 9 (Zajicek Rebuttal).
[87] OAG Initial Brief at 13.
[88] OAG Initial Brief at 14 (citing Ex. DER-8 at 3 (Zajicek Rebuttal)).

Mr. Zajicek did calculate that a $.02216 per-therm volumetric charge increase would result in a decrease in energy usage of around 0.67 percent. However, Mr. Zajicek explained, "I do not believe the change is significant enough to impact customers' energy conservation behavior."[89] Mr. Zajicek reasoned that any cost increase, regardless of whether it occurred in the service or volumetric charge, could reduce customer usage.[90] Mr. Zajicek also cautioned that natural gas is an extremely inelastic good, which it makes it difficult for most consumers to reduce their usage when faced with a price increase.[91]

The OAG Initial Brief also provided, "Mr. Zajicek asserts that any increased per-therm cost could negatively impact low-income customers because they are higher-than-average users of gas."[92] The OAG Initial Brief continued, "This assertion is perplexing given Mr. Zajicek's earlier conclusion that, in fact, low-income customers use an amount of gas comparable to other customers."[93] This characterization suggests that Mr. Zajicek concluded with certainty that low-income customers use the same amount of natural gas as other customers. However, Mr. Zajick's testimony acknowledges that robust consumption data is not available by income.[94] Accordingly, Mr. Zajicek appropriately limited his conclusion.

Mr. Zajicek first noted that Low Income Home Energy Assistance Program ("LIHEAP") data suggests that enrollees and non-enrollees use comparable; meaning, "similar or equivalent"

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[89] Ex. DER-8 at 2-3 (Zajicek Rebuttal).
[90] *Id.* at 3-4.
[91] *Id.* at 3.
[92] OAG Initial Brief at 16 (citing Ex. DER-8 at 4, 9 (Zajicek Rebuttal); Ex. DER-4 at 53-54 (Zajicek Direct)).
[93] *Id.*
[94] Ex. DER-4 at 53 (Zajicek Direct) (explaining that it is unclear whether low income customers have a different usage pattern than other customers).

amounts of natural gas.[95] Mr. Zajicek second responded to OAG witness Mr. Brian Lebens' assertion that low-income customers tend to be low-usage customers.[96] Mr. Zajicek explained that this conclusion was inconsistent with his LIHEAP analysis. Consistent with his LIHEAP analysis, Mr. Zajicek noted there are reasons why low-income customers "may actually use slightly more energy" than other customers.[97] In this way, Mr. Zajicek rejected Mr. Lebens' assertion and posited some underlying reasons why his LIHEAP data analysis produced a conservative result. Put simply, Mr. Zajicek connected his LIHEAP data analysis showing that customers, regardless of income, consume similar amounts of natural gas to unique challenges facing low-income customers such as older homes with less insulation.

B. Basic Customer Charge Application Method

Great Plains proposed that its basic service charge be applied on a daily basis. The charge currently is applied on a monthly basis.[98] This proposal is inconsistent with the principle that rates should be understandable and easy to administer because it would increase the complexity of customer bills.[99] Mr. Zajicek concluded that a monthly charge is simpler for customers to understand. He further testified that daily and monthly application of the charge produce almost exactly the same financial results for Great Plains. To that end, Mr. Zajicek found that the Company appears to have chosen a set monthly rate and simply divided it by the total number of days in the year to identify its daily rate.[100] Great Plains' proposal is

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[95] Comparable, American Heritage Dictionary (5th ed. 2020).
[96] Ex. DER-8 at 9 (citing Ex. OAG-1 at 7 (Lebens Direct))
[97] Ex. DER-8 at 9 (citing Ex. DER-4 at 54-55 (Zajicek Direct)). The word "may" is used "to express possibility or probability." May, American Heritage Dictionary (5th ed. 2020). "Slightly" means "to a small degree or extent; somewhat." Slightly, American Heritage Dictionary (5th ed. 2020).
[98] Great Plains Initial Brief at 40-41 (citing Ex. GP-32 at 3 (Bosch Rebuttal)).
[99] Ex. DER-4 at 50-51 (Zajicek Direct).
[100] *Id.*

unreasonable because it produces marginal benefits and needlessly risks customer confusion. The Commission should reject it.

CONCLUSION

The Department respectfully requests a recommendation from the ALJ, and an Order from the Commission, determining that the rates requested by Great Plains have not been shown to be just and reasonable, as required by Minn. Stat. § 216B.16, subd. 5, for the reasons discussed in Department's Initial Brief, Reply Brief, and Proposed Findings of Fact. The Department requests that the Commission establish rates consistent with the principles, analyses and recommendations, as addressed in the Department's testimony and in the documents noted above.

Dated: April 24, 2020

Respectfully submitted,

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|#4703461-v1

CERTIFICATE OF SERVICE

Re: ***In the Matter of the Petition by Great Plains Natural Gas Company, a Division of Montana-Dakota Utilities, Co., for Authority to Increase Natural Gas Rates in Minnesota***
OAH Docket No. 65-2500-36528; MPUC Docket No. G004/GR-19-511

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Ann Kirlin, hereby state that on April 24, 2020, I filed by electronic eDockets the attached Reply Brief of the Minnesota Department Of Commerce, Division Of Energy Resources, and eServed or sent by US Mail, as noted, to all parties on the attached service list.

See attached service list.

/s/ Ann Kirlin
ANN KIRLIN

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