

May 16, 2017

PUBLIC DOCUMENT

Daniel P. Wolf Executive Secretary Minnesota Public Utilities Commission 121 7th Place East, Suite 350 St. Paul, Minnesota 55101-2147

RE: PUBLIC Reply Comments of the Minnesota Department of Commerce, Division of Energy Resources Docket No. G011, 002/C-17-305

Dear Mr. Wolf:

Attached are the **PUBLIC** Reply Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department or DOC), in the following matter:

Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation Against Northern States Power Company d/b/a Xcel Energy for Violations of Minn. Stat. § 216B.01 and Commission Policy.

The Petition was filed on April 19, 2017 by:

Amber Lee Regulatory and Legislative Affairs Manager Minnesota Energy Resources Corporation. 2605 145<sup>th</sup> Street West Rosemount, MN 55068

As discussed in the attached Reply Comments, the Department recommends that the Minnesota Public Utilities Commission (Commission) **dismiss the Complaint**. The Department is available to answer any questions that the Commission may have.

Sincerely,

/s/ JOHN KUNDERT Financial Analyst

JK/It Attachment



## BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

# PUBLIC REPLY COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. G011, 002/C-17-305

## I. PROCEDURAL HISTORY

On April 19, 2017, Minnesota Energy Resources Corporation (MERC or the Company) filed with the Minnesota Public Utilities Commission (Commission) a formal complaint (Complaint) against Xcel Energy (Xcel). The Complaint alleges that Xcel plans to extend natural gas service to "the new Minnesota Vikings complex [Vikings' new facility] in Eagan, Minnesota – an area that is located entirely in MERC's natural (although not exclusive) service territory and that has long been served solely by MERC.".<sup>1</sup> MERC alleges that Xcel's actions are inconsistent with the provisions of Minn. Stat. § 216B.01 and existing Commission policies. The Company also posits that it has the exclusive right to provide natural gas service to the Vikings' new facility.<sup>2</sup>

On April 21, 2017, the Commission issued a Notice of Comment Period. The Notice provided for an initial comment period that closed on May 4, 2017 as well as a Reply Comment period that closed May 15, 2017.

On April 28, 2017 Xcel filed its Response to MERC's Formal Complaint. Xcel's response included a legal analysis in which Xcel concluded that MERC's complaint was without merit and requested that the Commission dismiss the Complaint without further investigation.

Also on April 28, 2017, Xcel filed a Motion to Expedite the filing of Reply Comments in the Complaint. Xcel requested that the filing date for Reply Comments be moved from May 15, 2017 to May 9, 2017.

On May 3, 2017 MERC filed its Initial Comments in the Complaint. In its Initial Comments, MERC disagreed with Xcel's proposal to advance the filing date for Reply Comments to May 9 from May 15, 2017. The Commission did not act on Xcel's Motion to Expedite.

On May 5, 2017 MERC filed an Informational Filing.

<sup>&</sup>lt;sup>1</sup> Complaint at 1.

<sup>&</sup>lt;sup>2</sup> MERC's former customer at the site of the Viking's new facility was Northwest Airlines (NWA).

Between April 21 and May 1, 2017 the Office of the Attorney General Residential Utilities Division, (OAG-RUD), and the Department each sent several information requests to MERC and Xcel. In addition, MERC asked Xcel several information requests.

## II. SUMMARY OF MERC'S COMPLAINT

The Complaint stated that Xcel's proposal to provide natural gas service to the Vikings' new facility violates Minn. Stat. § 216B.01, referencing the language regarding duplication of facilities and increases in the cost of service to consumers. MERC also expressed the following three concerns:

- <u>Safety</u> related to the placement of Xcel's proposed distribution line, which would traverse a MERC distribution line;
- <u>Stranded Costs</u> the recovery of MERC's stranded costs associated with the facilities that currently serve the former Northwest Airline (NWA) site; and
- <u>"Customer Poaching"</u> the potential financial effects on rates of allowing existing large customers the opportunity to require natural gas local distribution companies to compete for their loads.<sup>3</sup>

MERC's requested relief is that the Commission:

- 1. Hold a hearing as MERC believes is required under Minn. Stat. § 216B.17;
- 2. Issue an order declaring that Xcel is in violation of Minn. Stat. § 216B.01 and Commission policy regarding the provision of natural gas by more than one utility in a given service area;
- 3. Issue an order declaring that, under the circumstances, MERC has the exclusive right to provide natural gas service to the Vikings new facility; and
- 4. Provide any additional relief that the Commission deems just and equitable.<sup>4</sup>

## III. XCEL'S RESPONSE

Xcel's response noted that the Commission reviews formal complaints using a two-step process. The first step of the process involves two questions:

- Does the Commission have jurisdiction over the complaint?
- Are there reasonable grounds to open an investigation?

Xcel concluded that the Commission does have jurisdiction, but that there are not reasonable grounds to open an investigation. In support of its position Xcel noted:

• the site's new tenant, the Minnesota Vikings, chose Xcel as their natural gas

<sup>&</sup>lt;sup>3</sup> MERC refers to this as a change in the "First in the Field" rule.

<sup>&</sup>lt;sup>4</sup> Complaint at page 10.

service provider after a competitive bidding process;

- one building remains on the site, but it was or will be demolished, this effectively means that MERC will no longer providing natural gas service to the site.
- Commission decisions in Docket Nos. G004,011/C-91-731 and G011,002/C-96-1062 support Xcel's position;
- MERC's concerns regarding the safety of an Xcel pipeline crossing over a MERC pipeline are inconsistent with MERC's past practice;
- MERC's concern regarding the potential for duplication of services and stranded costs would be more appropriately addressed in a rate case proceeding; and
- MERC's reliance on the "First in Field" rule is a new concept and unsupported by Minnesota law or Commission precedent.

Xcel concluded by requesting that the Commission dismiss MERC's complaint without further investigation.

## VI. DEPARTMENT ANALYSIS

The Department's provides separate legal and economic analyses.

A. LEGAL ANALYSIS

In three separate proceedings, the Commission addressed situations in which two natural gas utilities competed to serve the same future load - Docket Nos. G004, 001/C-91-731, G011/C-96-1062 and G999/CI-90-563. The Department addresses each of these dockets, below.

1. Docket No. G004, 001/C-91-731 – Great Plains Energy Complaint against Peoples Natural Gas (91-731 Docket)

In the 91-731 Docket, the Commission dismissed Great Plains Energy's (Great Plains) complaint that Peoples Natural Gas (Peoples) violated several provisions of Minnesota law, and Peoples' own tariff, when Peoples agreed to provide natural gas service to Minnesota Corn Processors (MCP). At the time of the agreement, MCP was an ethanol facility that Great Plains was serving. While this docket did not specifically address the issue of the duplication of facilities that MERC identified in its pleadings in the present docket, it did address a situation in which two utilities wanted to provide service to a facility that does not yet exist. The Commission noted in its Order dismissing Great Plains' complaint that Peoples' agreement would serve new, not existing, load:<sup>5</sup>

[T]his is not a case in which one utility is using flexible rates to take away the load of another utility. The new load that Peoples wants to serve does not yet exist. It will exist only if MCP follows

<sup>&</sup>lt;sup>5</sup> In the Matter of the Complaint of Great Plains Natural Gas Company Against Peoples Natural Gas Company and UtiliCorp United, Inc., ORDER DISMISSING COMPLAINT at 4 (December 20, 1991).

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> through with its plans to convert its manufacturing operations from coal to natural gas. Great Plains will continue to serve MCP's existing load (office heating) whether or not the conversion occurs. Great Plains is not losing an existing load to another utility.

Further, the Commission addressed the non-exclusive nature of service territories for natural gas local distribution facilities:<sup>6</sup>

Presumably, there would be no issue at all, since gas utilities do not have exclusive service territories and generally can serve any new load their distribution facilities can reach. . . . Finally, once it has been determined that Peoples' contract with MCP does not violate the flexible rates statute, the complaint rests entirely on the contention that Great Plains has an exclusive right to serve this load. This contention has no basis in law or policy. Minnesota does not have assigned service areas for gas utilities. It does have assigned service areas for electric utilities, which suggests that the Legislature intentionally treated these two types of utilities differently. Peoples, then, is free to serve this new load, in the absence of special circumstances, such as unnecessary duplication of facilities or harm to existing ratepayers, requiring Commission intervention.

The Commission's findings in the Great Plains v. Peoples docket developed reasonable guidelines for evaluating complaints of this nature. For example, the Commission's decision suggests that Minnesota natural gas utilities may compete on equal footing for new load if the results of that competition would not result in unnecessary duplication of facilities or harm to existing ratepayers.

Attachment A contains a copy of this ORDER.

2. Docket No. G011/C-96-1062 – Peoples Natural Gas Complaint against Northern States Power Company (96-1062 Docket)

In the 96-1062 Docket, the Commission dismissed Peoples' complaint against Northern States Power Co. (NSP), which alleged that NSP's construction to serve new load violated the letter, spirit and intent of Minn. Stat. § 216.01.

This docket involved MERC's and Xcel's predecessor companies (Peoples and NSP, respectively) in a service area dispute that incorporated a development in Eagan (Eagandale Center) as well as a residential development in North Branch (Casselberry Ponds).

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In its Order dismissing the complaint, the Commission summarized Peoples' argument, which appears to be similar to the arguments that MERC has advanced in the instant proceeding.<sup>7</sup>

Peoples argued that NSP unnecessarily duplicated facilities in the two subject areas, because Peoples had stood ready and willing to serve before NSP built to serve (in the case of Casselberry) or sought authority to build (in the case of Eagandale Center). According to Peoples, the potential of both economic and physical harm flowed from NSP's actions.

Peoples argued that retail users would pay higher rates than necessary due to NSP's duplicative service facilities. NSP's actions would deny consumers gas service at the best and least cost. The harm was especially unjust because the choice of providers was being made by the developers, not by the retail users.

Peoples also argued that NSP's actions would create the potential for safety hazards, since gas main might be laid in proximity to existing pipe.

Peoples further objected to NSP's actions because they would tend to escalate disputes between public utilities, contrary to the intent of Minn. Stat. § 216B.01.

The Commission explained its dismissal of Peoples' complaint, as follows:8

All parties agree that Minnesota statues do not establish exclusive service territories for gas utilities. Peoples therefore bases its complaint on Minn. Stat. § 216B.01. which establishes as one goal of utility regulation the avoidance of unnecessary duplication of facilities. Peoples charges that NSP's decision to serve the two subject areas, which are currently contiguous to Peoples' existing facilities, has resulted in the unnecessary duplication of facilities. Peoples urges the Commission to find that this service duplication necessitates the investigation of serious issues of safety and economics.

The Commission disagrees. After carefully considering the parties' written and oral comments, the Commission finds that Peoples has raised no issue that warrants further investigation.

<sup>&</sup>lt;sup>7</sup> In the Matter of a Complaint of Peoples Natural Gas against Northern States Power Company regarding its Construction of Distribution Facilities, Docket No. G011/C-96-1062, ORDER DISMISSING COMPLAINT at 3 (Oct. 21, 1996).

<sup>&</sup>lt;sup>8</sup> Id. at 4.

The Commission will analyze Peoples' charges regarding safety and economics in turn.

Regarding purported safety concerns, the Commission was unpersuaded by Peoples' arguments:<sup>9</sup>

The Minnesota Office of Pipeline Safety (OPS) sets standards for construction of gas pipelines in Minnesota. The OPS has overseen the development and implementation of NSP's pipeline construction procedures. . . . In addition, city and county engineers analyze applications to construct pipeline in city and county rights-of-way. . . . Any safety issues relevant to gas service to the Casselberry addition and the Eagandale Center have been addressed by the appropriate bodies. The Commission finds that Peoples has not raised any issue of safety which warrants further investigation in this proceeding.

The Commission stated that it "finds that Peoples has not raised any economic issue which warrants further investigation at this time."<sup>10</sup>

Attachment B contains a copy of this ORDER.

3. Docket No. G999/CI-90-563 – Investigation in Competition between Gas Utilities in Minnesota (90-563 Docket)

In the 90-563 Docket, the Commission reviewed issues concerning the provision of natural gas service in an area by more than one provider. The Commission concluded that competition between gas providers is allowed by statute in the same territory, and that the Commission has the capacity to assess complaints on a case-by-case basis, as follows:<sup>11</sup>:

No ultimate judgment on this subject is required. First, while recognizing the negative potential cited above, the fact remains that there is no statutory prohibition against competition between two or more gas providers in the same territory. Moreover, it appears that the Commission has the capacity to balance the interests of utilities, competed-for customers, and current customers on a case by case basis.

A copy of this ORDER is included as Attachment C.

In summary, the Commission reviewed past complaints in light of Minnesota law and policies, and reserved the right to review complaints on a case-by-case basis.

<sup>&</sup>lt;sup>9</sup> Id. at 4-5.

<sup>&</sup>lt;sup>10</sup> *Id.* at 5.

<sup>&</sup>lt;sup>11</sup> Generic Inquiry, Docket No. G999/CI-90-563, ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET at 5 (March 31, 1995).

## B. TRANSACTION-RELATED ECONOMIC ANALYSIS

The Department, the OAG-RUD and MERC all asked discovery that attempted to identify the cost and benefits of the transaction as structured for the different parties involved.

## 1. Xcel's Estimated Benefits to the Minnesota Vikings

In Xcel's response to DOC Information Request No. 7, Xcel provided an estimate of the financial benefits to the customer, the Minnesota Vikings, from its proposal to be [TRADE SECRET DATA HAS BEEN EXCISED] in one-time benefits and [TRADE SECRET DATA HAS BEEN EXCISED] in annual gas rate savings.

The components of the **[TRADE SECRET DATA HAS BEEN EXCISED]** in one-time benefits consist of:

- [TRADE SECRET DATA HAS BEEN EXCISED] in a share-holder funded promotional discount;
- [TRADE SECRET DATA HAS BEEN EXCISED] in potential reduction in income tax; and,
- \$59,714 in Natural Gas EDA Conservation Rebate.<sup>12</sup>

The components of the **[TRADE SECRET DATA HAS BEEN EXCISED]** in lower ongoing gas costs consists of **[TRADE SECRET DATA HAS BEEN EXCISED]** in savings associated with gas service provided to the Vikings' headquarters building and **[TRADE SECRET DATA HAS BEEN EXCISED]** in savings associated with providing gas service to the Vikings Groundskeeper facility.

The Department reviewed these estimated savings to the extent practicable given the timing of this proceeding. According to information provided by Xcel, the promotional discount identified is provided from shareholder funds and Xcel will not seek recovery of those funds from ratepayers. The Department considers Xcel's decision to provide shareholder funds to be a business decision that does not appear to unreasonably affect Xcel's or MERC's ratepayers, based on the analysis below. The estimate for tax-based savings appears to be related to the promotional discount and relatively small; thus, the Department has no comment on that benefit. As for the EDA Conservation Rebate amount, the Department did not have adequate time to verify the claimed dollar value. That said, it appears likely that the Vikings new headquarters would qualify for some form of energy efficiency assistance.

Turning to the on-going gas-related savings claims, Xcel's estimate of the savings when compared to MERC's service to the headquarters facility is **[TRADE SECRET DATA HAS BEEN EXCISED].** As for Xcel's estimated annual gas-related savings for the Groundskeeper facility, **[TRADE SECRET DATA HAS BEEN EXCISED].** By the Department's calculation, Xcel's combination of rate offerings results in a range of estimated annual savings for the Vikings of **[TRADE SECRET DATA HAS BEEN EXCISED].** 

<sup>&</sup>lt;sup>12</sup> "EDA" stands for Economic Development Assistance.

## 2. MERC's Estimated Impacts of Xcel Service to the Minnesota Vikings

In its discovery responses to the OAG and the Department, MERC provided several estimates of the effects on MERC's system if Xcel serves the Vikings' new facility. It is the Department's understanding that two of those estimates can be used to estimate the effects on MERC's costs that are recovered through current rates and those costs that are not yet included in rates.

Beginning with those costs currently recovered through rates, MERC identified in its response to OAG Information Request No 2 that \$887,571 in net plant associated with under-used or abandoned facilities would result from Xcel's proposal to serve the Vikings' new facilities. Of that \$887,571 in net plant, only \$8,119 of net plant was classified as abandoned; the remaining \$879,452 was classified as under-used plant. According to MERC staff, the plant in question is used and useful and improves system reliability. Consequently, the Department concludes that the cost to MERC identified in that response of Xcel serving the Viking's new facility is equal to the \$8,119 of abandoned plant, not the \$887,571 that MERC included in its cost estimate.<sup>13</sup>

Turning to those costs not yet included in rates, DOC Information Request No. 1 asked MERC to provide support for its estimate of \$140,000 in direct (capital-related) costs that it claimed it had incurred since August 2016 to provide service to the Vikings. In its response, MERC identified \$155,676 in work order costs it incurred during the time period in question.<sup>14</sup> Of those estimated costs, \$39,089 was clearly attributable to the provision of gas service to the Vikings' building contractor Kraus Anderson. Specifically, those costs are related to the installation and removal of two service lines and meter sets that provided gas service to Kraus Anderson during construction. An additional \$4,057 appears to be related to the abandonment of the facilities that provided service to the one remaining NWA building.

The largest cost MERC cited of \$112,530 is related to the installation of six inch main along Ames Crossing. MERC noted in its response to DOC Information Request No. 1: "The installation of the six inch main was completed in August 2016 as a system integrity project necessary to loop MERC's system in this area to reinforce reliability and to be able to seamlessly serve the projected load."

MERC's characterization of the Ames Crossing project as a system reliability project suggests that not all the costs associated with that project are likely attributable to the new load from the Vikings' proposed development. A more reasonable estimate of the costs associated with the Vikings share of that project might be no more than half of the amount referenced, or approximately \$56,265. Combining that estimate with the directly

<sup>&</sup>lt;sup>13</sup> The Department did a back-of-the envelop estimate of MERC's annual revenue requirement given this change. It decreased from the \$128,779 amount provided in its response to OAG-RUD Information Request No. 2 to approximately \$1,200.

<sup>&</sup>lt;sup>14</sup> MERC apparently did not ask the Vikings or their contractor Kraus-Anderson to pay a contribution in aid of construction (CIAC) to offset a portion of those costs.

attributable costs of \$the Department's estimate of the costs MERC has incurred would be no more than \$99,411.

MERC also stressed that its existing infrastructure at the distribution main level in the area is currently capable of providing service to the Vikings even after the site is fully developed without additional investment. However, like Xcel, it would incur investment to provide service to the future Vikings' new facilities.

As for annual revenues, MERC estimated that it would receive approximately **[TRADE SECRET DATA HAS BEEN EXCISED]** in additional revenues from the Vikings facility once it is completed. MERC also stated that it would lose the revenue it received from the former NWA facility on a going-forward basis. The Department did not identify an estimate of that annual revenue stream since MERC would lose that amount of revenue irrespective of which utility were to service the Vikings new facility.

3. Xcel Energy Estimated Costs and Revenues

In its response to DOC Information Request No. 10, Xcel estimated its all-in capital costs associated with the project to be [TRADE SECRET DATA HAS BEEN EXCISED].<sup>15</sup> Xcel estimated the annual revenue from the project to be [TRADE SECRET DATA HAS BEEN EXCISED].<sup>16</sup>

4. MERC's Ratepayers

MERC's ratepayers may see a higher revenue deficiency in MERC's subsequent rate case if Xcel serves the Vikings' new facility. MERC would lose the revenue from the NWA facility, regardless of which utility serves the Vikings' new facility, and would not be able to offset that lost revenue with revenue from the Vikings' new facility. Regardless of which utility serves the Vikings' new facility, MERC's ratepayers may benefit from the additional investment in the area surrounding the Vikings parcel since MERC provides natural gas service to the surrounding area.

MERC also incurred capital costs to provide service to Kraus Anderson during the interim period; it does not appear likely the Vikings have or intend to reimburse MERC for these costs.

## 5. Xcel's Ratepayers

<sup>&</sup>lt;sup>15</sup> It is the Department's understanding that this estimated cost represents the all-in capital-related costs of developing the entire project, not the costs of providing service to the two initial facilities.

<sup>&</sup>lt;sup>16</sup> While the Department is concerned that Xcel estimated annual revenue that is **[TRADE SECRET DATA HAS BEEN EXCISED]** than MERC's for the facility once it is fully constructed, MERC and Xcel used different assumptions to develop those estimates. Time constraints associated with these Reply Comments kept the Department from attempting to reconcile those assumptions and to develop a consistent revenue estimate. This is an exercise the Department or Commission staff could complete if the Commission believes it would be helpful.

Xcel's ratepayers likely would see a slightly smaller revenue deficiency in its subsequent rate case if Xcel serves the Vikings' new facility, due to additional revenue that service to the Vikings new facility would provide, reduced to some extent by the associated increase in the capital costs that provision of service to that facility would require.

## 6. Summary of Transaction-Specific Costs and Benefits

Given the fact that Minnesota statutes have not established service territories for natural gas utilities, as indicated by the Commission's Orders noted above, it appears likely that the Vikings would be allowed to select Xcel to serve their new facility. If so, the Vikings would be the primary beneficiary of such an outcome. Xcel's ratepayers also would benefit from the addition of the Vikings new load to Xcel's system.

MERC has incurred \$39,089 in what the Department considers to be project-specific costs that it may not be able to recover from the Vikings, unless MERC has an agreement by which the Vikings and/or Xcel would reimburse MERC for the directly attributable project-related costs for interim service. Regardless of which utility serves the Vikings' new facility, MERC will lose the annual revenue it received from the service it provided to the remaining NWA building. MERC's ratepayers may experience some financial harm, although this effect could be offset by MERC serving additional development that is expected to occur in that area.

## C. POLICY ISSUES

This proceeding also identified several different issues policy-related issues.

1. Natural Gas Service Competition

MERC expressed significant concern regarding its concept of "First in Field". That concept appears to rest on the idea that if MERC was the first natural gas service provider to serve a specific load, then Commission policy should be that MERC has the right to continue to serve that same geographic location, even if the customer no longer exists and a new customer moves in. The Company was also concerned that Xcel, or another natural gas service provider, could "poach" its large customers if the Commission approves the creation of a broadly competitive market for natural gas services.

The Department believes that the Dockets above provide helpful information about the "First in Field" idea. For example, 91-731 involved a natural gas utility (Great Plains) providing service to a customer prior to another utility (Peoples, MERC's predecessor) competing to provide new service to the customer. There, the Commission determined that

...gas utilities do not have exclusive service territories and generally can serve any new load their distribution facilities can reach. [T]he complaint rests entirely on the contention that Great Plains has an exclusive right to serve this load. This contention has no basis in law or policy. Minnesota does not have assigned service areas for gas utilities. It does have assigned service areas for electric utilities, which suggests that the Legislature intentionally treated these two types of utilities differently. Peoples, then, is free to serve this new load, in the absence of special circumstances, such as unnecessary duplication of facilities or harm to existing ratepayers, requiring Commission intervention.

Contrary to MERC's apparent fears, the Department believes that MERC's concerns regarding the potential for Xcel or other natural gas service providers to "poach" existing customers and their existing loads is overstated. The Department also believes that the Commission is well-equipped to consider future complaints in this regard on a case-by-case basis.

Another factor that counterbalances MERC's concerns relative to competition is that, according to MERC's response to DOC Information Request No. 3, "Overall, when considering all charges, including the cost of gas, MERC's rates are approximately ten percent lower than Xcel's for the entire projected load, and the same is true for the rates associated with Phase I of the Planned Development."

If MERC's rates are ten percent lower than Xcel's for similarly situated customers, the Company should have a distinct advantage in future situations involving its competition against Xcel.

## 2. Duplication of facilities

As noted above, the Commission allowed for some apparent duplication of facilities in the 91-731 Docket. The Department could not identify a compelling reason in this proceeding to recommend a different determination.

3. Safety

MERC identified the potential for Xcel crossing MERC's line as being a safety hazard. As noted above, the Commission has held that it is the responsibility of the Minnesota Office of Pipeline Safety and the relevant branches of local government to address safety matters. The Department recommends that the Commission make a similar determination in this proceeding.

## 4. Reliability

The Department asked Xcel staff informally about the expected reliability of the gas service that Xcel is proposing to provide to the Vikings' new facility via what appears to be a radial feed by Xcel. Xcel explained that Xcel has the ability to loop the service to the Vikings due to the fact that Xcel is providing natural gas service to an area located to the east of the Vikings' new facility.

## V. DEPARTMENT RECOMMENDATIONS

The Department recommends that the Commission dismiss the Complaint. Our analyses found no reasonable basis to reverse the Commission's prior determinations regarding new natural gas load. The competition between Xcel and MERC for the Vikings new facility produced results that support dismissal of the complaint - cost savings for the customer (the Vikings in this instance) without undue harm to MERC's ratepayers.

Regarding the three questions the Commission posed in its Notice of Comment Period dated April 21, 2017 the Department provides the following responses.

A. DOES THE COMMISSION HAVE JURISDICTION OVER THE SUBJECT MATTER OF THIS COMPLAINT?

The Department believes that the Commission has jurisdiction over the subject matter of this Complaint given the language of Minn. Stat. §216B.01. Both Xcel and MERC agree that the Commission has jurisdiction.

B. IS IT IN THE PUBLIC INTEREST FOR THE COMMISSION TO INVESTIGATE THESE ALLEGATIONS?

Based on the utilities' responses to discovery requests of the OAG-RUD and Department, the Department concludes that no additional investigation is in the public interest. The Department also concludes that the facts identified in this proceeding are significantly similar to the facts the Commission faced in previous dockets of this nature. The Department provided the Commission's analyses and decisions of those previous dockets in these Reply Comments. No additional investigation is required given the information the parties have provided thus far in this proceeding. If the Commission wants to review the incentives and disincentives that the current natural gas policy regarding service areas creates, the Department recommends the Commission open a generic docket on this issue.

C. IF THE COMMISSION CHOOSES TO INVESTIGATE THE COMPLAINT, WHAT PROCEDURES SHOULD BE USED TO DO SO?

The Department recommends that the Commission dismiss the Complaint. Thus, this question is moot, in the Department's view.

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#### BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson Cynthia A. Kitlinski Dee Knaak Norma McKanna Don Storm Chair Commissioner Commissioner Commissioner Commissioner

In the Matter of the Complaint of Great Plains Natural Gas Company Against Peoples Natural Gas Company and UtiliCorp United, Inc. ISSUE DATE: December 20, 1991 DOCKET NO. G-004, 011/C-91-731 ORDER DISMISSING COMPLAINT

#### PROCEDURAL HISTORY

#### I. Proceedings to Date

On October 1, 1991 Great Plains Natural Gas Company (Great Plains) filed a complaint against Peoples Natural Gas Company (Peoples) and its parent company, UtiliCorp United, Inc. The Complaint alleged that Peoples had entered into a contract with a Great Plains customer, Minnesota Corn Processors, to build a natural gas pipeline to provide the customer with sales and transportation service.

The Complaint claimed the contract violated Minnesota law as follows: '1. it violated the flexible rates statute, Minn. Stat. § 216B.163 (1990), by using flexible rates to compete against another regulated utility; 2. it violated Peoples' own tariffs by failing to require a contribution in aid of construction; 3. it granted the customer an unreasonable rate preference or advantage in violation of Minn. Stat. §§ 216B.03 and .07 (1990); 4. it violated the flexible rates statute, Minn. Stat. § 216B.163 (1990), by offering flexible rates which do not cover the incremental costs of providing the service; 5. it violated the statutory requirement that utilities file plans for "major utility facilities" in advance of construction, Minn. Stat. § 216B.24 (1990).

On October 4, 1991 the Commission issued a notice soliciting comments on the Complaint. On October 18, 1991 Peoples filed an answer and memorandum. Peoples admitted entering into the contract and denied the contract violated any applicable law. Peoples asked the Commission to dismiss the Complaint without further proceedings.

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On October 31, 1991 Great Plains filed reply comments. On the same date, the Department of Public Service (the Department) filed its report and recommendation. The Department recommended prohibiting Peoples from performing under the contract because the contract did not ensure recovery of the incremental costs of providing service and because it was not clear that contract rates were set to compete with the price of unregulated, as opposed to regulated, fuels.

To meet the Department's concerns, the parties amended the contract to provide that Peoples would not serve the Company's existing load. Also, Peoples warranted that it would remove the pipeline from rate base if it were abandoned before its costs had been recovered. The Department then recommended allowing performance by Peoples and dismissing the Complaint.

The matter came before the Commission on November 7, 1991.

#### FINDINGS AND CONCLUSIONS

#### II. Factual Background

Minnesota Corn Processors (MCP) in Marshall, Minnesota is a long time customer of Great Plains. It uses natural gas for heating only; its manufacturing operations are powered by coal. In late 1989 MCP initiated discussions with Great Plains about converting its manufacturing operations to natural gas and contracting for the provision of transportation service through a pipeline to be constructed and operated by Great Plains.

After extensive negotiations, Great Plains offered to build the pipeline and provide service under its interruptible flexible transportation tariff. Under the terms of the contract MCP would be required to maintain its alternate fuel capacity, would promise to take at least 3 million Mcf over the course of the next four years, would pay \$0.17 per Mcf delivered during the first year, could negotiate a different rate under the flexible tariff in subsequent years, and would not be required to contribute to the cost of constructing the pipeline.

MCP entered into similar negotiations with Peoples. As a result of those negotiations, MCP and Peoples signed a contract under which Peoples agreed to serve the Company under its interruptible flexible transportation tariff. Under the terms of that contract MCP promised to take at least 5 million Mcf over the course of the next five years and was required to use natural gas for manufacturing for the next six years unless the cost of using coal fell below 85% of the cost of using gas. The contract price was Peoples' standard interruptible transportation rate of

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\$0.0829 per Mcf (plus monthly customer and transport charges), until such time as MCP qualified for lower rates under Peoples' flexible tariff. The contract did not require the company to contribute to the cost of constructing the pipeline.

After reviewing the Department's comments, Peoples and MCP amended the contract to exclude the heating load currently served by Great Plains. Peoples also assumed the risk of default by MCP by agreeing to remove the pipeline from rate base if it should be abandoned before construction costs had been recovered.

#### III. Commission Action

The parties state there are no disputed issues of material fact in this case and contested case proceedings are not required. The Commission agrees.<sup>1</sup> The issues before the Commission are whether Peoples has violated the flexible rates statute by using flexible rates to compete with another regulated utility and whether Peoples has violated Minn. Stat. § 216B.24 (1990) by failing to file its plans to build the pipeline at an earlier date. These issues will be considered in turn.

## A. The Contract Does Not Violate the Flexible Rates Statute

Great Plains emphasizes that the flexible rates statute, Minn. Stat. § 216B.163 (1990), was intended to allow gas utilities to retain large customers who might otherwise convert to cheaper unregulated fuels. The statute allows the utility to offer competitive rates to these customers, as long as the rates offered cover the incremental costs of providing service. The rationale is that keeping these customers on the system, making some contribution to its fixed costs, is better for captive customers than losing their contribution entirely. The Commission agrees with Great Plains that this is the basic purpose of the statute.

<sup>1</sup> The parties believe Peoples' agreement to remove the pipeline from rate base if it is abandoned before its costs are recovered ends the need to examine the three claims of the Complaint resting on the allegation that contract rates do not ensure recovery of incremental costs, since that allegation rested solely on projections of the costs of constructing the pipeline. The Commission notes that a utility's willingness to make up the difference between incremental costs and flexible rates does not legitimize rates below incremental costs. In this case, however, the likelihood that rates would fail to cover incremental costs was so low and depended on contingencies so unlikely that it is reasonable to accept Peoples' guarantee in lieu of further development of the incremental cost issue.

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Great Plains then argues that allowing Peoples to serve Minnesota Corn Processors at flexible rates would violate the purpose of the statute by allowing one regulated utility to use flexible rates to compete for the customer of another. The Commission disagrees.

First, this is not a case in which one utility is using flexible rates to take away the load of another utility. The new load Peoples wants to serve does not yet exist. It will exist only if MCP follows through with its plans to convert its manufacturing operations from coal to natural gas. Great Plains will continue to serve MCP's existing load (office heating) whether or not the conversion occurs. Great Plains is not losing an existing load to another utility. That would raise more serious statutory issues, since the purpose of the flexible rates statute is to prevent the loss of large loads already on the system and the threat those losses pose to the rates of captive customers.

Second, it is not clear that flexible rates were the decisive factor in MCP's decision to contract with Peoples. Peoples' standard rate is lower than Great Plains' flexed rate offer (\$.0829 as opposed to \$.14 per Mcf). It would be cheaper for MCP to take service from Peoples at the standard rate than from Great Plains at the flexible rate. MCP has agreed to take service at the standard rate initially and whenever it does not qualify for the flexible rate. Conceivably, MCP could take service at the standard rate for the entire length of the contract. In that case, there would be no issue under the flexible rates statute. Presumably, there would be no issue at all, since gas utilities do not have exclusive service territories and generally can serve any new load their distribution facilities can reach. Furthermore, once Peoples begins serving MCP at the standard rate, MCP is properly a customer of Peoples, eligible for service at flexible rates if it demonstrates its eligibility under the statute and the Commission-approved flexible rate tariff.

Finally, once it has been determined that Peoples' contract with MCP does not violate the flexible rates statute, the complaint rests entirely on the contention that Great Plains has an exclusive right to serve this load. This contention has no basis in law or policy. Minnesota does not have assigned service areas for gas utilities. It does have assigned service areas for electric utilities, which suggests that the Legislature intentionally treated the two types of utilities differently. Peoples, then, is free to serve this new load, in the absence of special circumstances, such as unnecessary duplication of facilities or harm to existing ratepayers, requiring Commission intervention. The Commission sees no special circumstances here and will not interfere with Peoples' decision to serve.

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B. Peoples' Failure to Make an Earlier Filing under Minn. Stat. § 216B.24 (1990) Does Not Prohibit Performance Under the Contract

Great Plains also alleged that Peoples should have filed its plans to build the pipeline to MCP under Minn. Stat. § 216B.24 (1990) as soon as it committed to build it, instead of waiting until Great Plains raised the issue in its Complaint. The statute does not set a deadline for making the filings it requires.

The Commission agrees with the Department that it is unclear that the pipeline is a "major utility facility" within the meaning of the statute. It is not necessary to resolve that issue today, however, since the filings in this case give the Commission adequate notice of Peoples' intention to build the pipeline. The Commission sees no need for more detailed inquiry into Peoples' construction plans and no need to take action on the timing of Peoples' filing.

#### IV. Conclusion

The Commission concludes that the contract between Peoples and Minnesota Corn Processors does not violate the flexible rates statute or any other statutory provision. The Commission finds that Peoples' filings in this case satisfy any requirement under Minn. Stat. § 216B.24 (1990) that it file notice of its intention to build the pipeline. The Commission will dismiss Great Plains' Complaint against Peoples.

#### <u>ORDER</u>

 The Complaint filed on October 1, 1991 by Great Plains Natural Gas Company against Peoples Natural Gas Company is dismissed.

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2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

RMAN

Richard R. Lancester Executive Secretary

(SEAL)

## DOC Attachment A Docket No. G011,002/C-17-305 Page 6 of 8

STATE OF MINNESOTA)

COUNTY OF RAMSEY

#### AFFIDAVIT OF SERVICE

I <u>M. Margaret Diedrich</u>, being first duly sworn, deposes and says:

That on the 20th, day of December, 1991 (s)he served the attached

Order Dismissing Complaint, Docket No. G-004, 011/C-91-731

<u>XX</u> By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

- <u>XX</u> By personal service
- <u>XX</u> By inter-office mail

to all persons at the addresses indicated below or on the attached list:

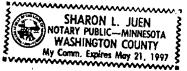
Commissioners Margie Hendriksen Carol Casebolt Peter Brown Ginny Zeller Dan Lipshultz Karen Sletten Janet Gonzalez Jean Dawson Reference Library Stuart Mitchell Bob Harding

MMargaret Dudick

Subscribed and sworn to before me, a notary public, this 23 day of

1991.

Notary Public



## DOC Attachment A Docket No. G011,002/C-17-305 Page 7 of 8

IN THE MATTER OF THE COMPLAINT OF GREAT PLAINS NATURAL GAS COMPANY AGAINST PEOPLES NATURAL GAS AND UTILICORP UNITED, INC. DOCKET NO. G-004,011/C-91-731 12-11-91 KK

RICK LANCASTER EXECUTIVE SECRETARY (14) MN PUBLIC UTILITIES COMMISSION 780 AMERICAN CENTER BLDG ST PAUL MINNESOTA 55101

ROBIN GARCIA (4) DEPARTMENT OF PUBLIC SERVICE 790 AMERICAN CENTER BLDG ST PAUL MINNESOTA 55101

JOAN PETERSON ASSISTANT ATTORNEY GENERAL 340 BREMER TOWER SEVENTH PLACE AND MINNESOTA STREET ST PAUL MINNESOTA 55101

DENNIS D AHLERS SPECIAL ASST ATTORNEY GENERAL 1100 BREMER TOWER 7TH PLACE & MINNESOTA STREET ST PAUL MINNESOTA 55101

SUSAN RESTER MILES HESSIAN MCKASY & SODERBERG 4700 IDS CENTER MINNEAPOLIS MN 55402

UTILICORP UNITED INC 911 MAIN ST SUITE 2000 KANSAS CITY MO 54105

ANN BOTHUM PEOPLES NATURAL GAS 3460 WASHINGTON DR SUITE 208 EAGAN MN 55122-1338

RICHARD HAUBENSAK PEOPLES NATURAL GAS 1815 CAPITOL AVENUE OMAHA NE 68102

GREAT PLAINS NATURAL GAS CO LEE FRANKLIN 105 WEST LINCOLN BOX 176

DOC Attachment A Docket No. G011,002/C-17-305 Page 8 of 8

#### FERGUS FALLS MN 56537

BILL COLE, CHAIR LYON COUNTY LYON COUNTY COURTHOUSE 607 W MAIN MARSHALL MN 56258

JOHN FEDA - MAYOR CITY HALL 344 W MAIN MARSHALL MN 56258

DUANE ADEN - CITY MANAGER CITY HALL 344 W MAIN MARSHALL MN 56258

MICHAEL J. BRADLEY MOSS & BARNETT 4800 NORWEST CENTER 90 SOUTH SEVENTH STREET MINNEAPOLIS, MN 55402-4119

DOC Attachment B Docket No. G011,002/17-305 Page 1 of 8

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#### BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs Marshall Johnson Dee Knaak Mac McCollar Don Storm

Chair Commissioner Commissioner Commissioner

In the Matter of a Complaint of Peoples Natural Gas against Northern States Power Company regarding the Construction of Distribution Facilities ISSUE DATE: October 21, 1996

DOCKET NO. G-011/C-96-1062

ORDER DISMISSING COMPLAINT

#### PROCEDURAL HISTORY

On September 11, 1996, Peoples Natural Gas Company (Peoples) filed a complaint against Northern States Power Company Gas Utility (NSP). Peoples alleged that NSP had violated the letter, spirit, and intent of Minn. Stat. § 216B.01, the basic statute establishing regulation of gas and electric utility service in Minnesota. Peoples objected to NSP's constructing facilities to serve customers in two areas which Peoples stands willing and able to serve. Peoples asked the Commission to open an investigation of the service dispute.

On September 19, 1996, Peoples filed a Motion to Expedite Consideration of the Complaint and Request for an Interim Cease and Desist Order. Peoples asked the Commission to issue a cease and desist order to preclude NSP from further construction in the subject areas until an investigation is completed and the complaint is resolved.

On October 2, 1996, NSP filed an answer.

On October 3, 1996, the matter came before the Commission for consideration.

#### FINDINGS AND CONCLUSIONS

#### I. FACTUAL BACKGROUND

Peoples raised issues regarding service to two areas currently being developed, the Eagandale Corporate Center and the Casselberry Ponds residential subdivision.

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#### A. The Eagandale Corporate Center

The City of Eagan, Dakota County, Minnesota has issued natural gas service franchises to both Peoples and NSP.

The developers of the new Eagandale Corporate Center, now under construction in the City of Eagan, have asked NSP to serve the Center. The Eagandale Center is contiguous to an area currently served by Peoples; it is not contiguous to any area currently served by NSP. NSP has applied to Dakota County for a permit to install a gas main to serve the Center. If the application is granted, NSP will locate the gas main within the County right-of-way.

#### B. Casselberry Ponds

The City of North Branch, Minnesota has issued franchises to provide natural gas service to both Peoples and NSP.

In May, 1996, the developer of Casselberry Ponds, a subdivision of approximately 150 homes located in North Branch, asked NSP to serve the new development. Casselberry Ponds is contiguous to gas facilities already installed by Peoples; the development is not contiguous to any area served by NSP.

In August, 1996, the City of North Branch granted NSP a construction permit to build the necessary gas main to serve Casselberry Ponds. Since that time, NSP has completed construction of the new facilities with the exception of individual service lines to houses which are still under construction.

#### II. POSITIONS OF THE PARTIES

#### A. Peoples

Peoples charged that NSP's actions violated the spirit and intent of Minn. Stat. § 216B.01, which provides in part:

It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminished efficiency in service to the consumers...

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Peoples argued that NSP unnecessarily duplicated facilities in the two subject areas, because Peoples had stood ready and willing to serve before NSP built to serve (in the case of Casselberry) or sought authority to build (in the case of the Eagandale Center). According to Peoples, the potential of both economic and physical harm flowed from NSP's actions.

Peoples argued that retail users would pay higher rates than necessary due to NSP's duplicative facilities. NSP's actions would deny consumers gas service at the best and least cost. The harm was especially unjust because the choice of providers was being made by the developers, not by the retail users.

Peoples also argued that NSP's actions would create the potential for safety hazards, since gas main might be laid in proximity to existing pipe.

Peoples further objected to NSP's actions because they would tend to escalate disputes between public utilities, contrary to the intent of Minn. Stat. § 216B.01.

Peoples argued that immediate and irreparable harm would ensue if NSP continued constructing facilities to serve Casselberry Ponds and the Eagandale Corporate Center. For this reason, the Commission should order NSP to cease and desist construction and service to the new areas until an investigation is completed and Peoples' complaint is resolved.

#### B. NSP

NSP countered that the statutes governing the provision of gas service in Minnesota do not create the concept of gas utility service areas. Because gas utilities do not hold exclusive territorial rights, NSP has the right under law to build to serve the two areas.

NSP argued that the Commission need not address safety issues raised by Peoples. The state Office of Pipeline Safety oversees standards for gas pipeline construction and maintenance. The cities and counties in which the facilities will be located will decide if they should grant licenses for NSP to build the gas facilities.

According to NSP, it is also unnecessary for the Commission to reach the economic issues raised by Peoples. NSP has been asked to serve in the new areas and will charge its customers the standard tariffed rates for gas service. NSP assumes the risk of nonrecovery in rates if the Commission decides in a future rate proceeding that the decision to build was imprudent.

For these reasons, NSP argued, no irreparable harm will result from building the facilities, and a cease and desist order is not warranted. NSP has already built into the Casselberry Ponds development; more harm would actually result from requiring NSP to tear up existing facilities than from allowing NSP to serve. Because NSP has not yet received a construction permit to build facilities to the Eagandale Center, the Commission need not preclude the utility from providing service there.

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#### C. The Department of Public Service (the Department)

Although the Department agreed with NSP that there is no legal impediment to NSP's piping to serve the two areas, the Department supported Peoples' request for an investigation. The Department believed that Peoples had raised questions regarding safety which should be explored. The Department also wished to investigate the economics of NSP's decision to pipe the two new areas at this time. Although the prudence of pipeline construction is usually the subject of rate case investigation, the Department noted that issues can be overlooked or underinvestigated in the press of a rate case proceeding.

#### **III. COMMISSION ACTION**

#### A. Introduction

Peoples has brought a complaint proceeding, the merits of which must be addressed before the Commission turns to Peoples' motion for a cease and desist Order. The Commission will therefore analyze the allegations of the complaint.

All parties agree that Minnesota statues do not establish exclusive service territories for gas utilities. Peoples therefore bases its complaint on Minn. Stat. § 216B.01, which establishes as one goal of utility regulation the avoidance of unnecessary duplication of facilities. Peoples charges that NSP's decision to build to serve the two subject areas, which are currently contiguous to Peoples' existing facilities, has resulted in the unnecessary duplication of facilities. Peoples urges the Commission to find that this service duplication necessitates investigation of serious issues of safety and economics.

The Commission disagrees. After carefully considering the parties' written and oral comments, the Commission finds that Peoples has raised no issue which warrants further investigation. The Commission will analyze Peoples' charges regarding safety and economics in turn.

#### B. Safety Issues

The Minnesota Office of Pipeline Safety (OPS) sets standards for construction of gas pipelines in Minnesota. The OPS has overseen the development and implementation of NSP's pipeline construction procedures. The OPS has inspected and approved NSP's construction of gas main into the Casselberry Addition.<sup>1</sup>

In addition, city and county engineers analyze applications to construct pipeline in city and county rights-of-way. The Casselberry construction has already received engineering approval

<sup>&</sup>lt;sup>1</sup> Construction of main into the Eagandale Corporate Center has not begun.

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and a construction permit. The Eagandale Center application is currently being analyzed by county engineers before a recommendation is made to the Dakota County Board.

Any safety issues relevant to gas service to the Casselberry addition and the Eagandale Center have been addressed by the appropriate bodies. The Commission finds that Peoples has not raised any issue of safety which warrants further investigation in these proceedings.

#### C. Economic Issues

The Commission has previously addressed economic questions implicit in duplicative gas service. In 1991, the Commission initiated a study group to examine these issues.

On March 31, 1995, the Commission issued an Order<sup>2</sup> summarizing the conclusions of the study group and terminating the investigation. The Order stated that there were both economic advantages and drawbacks to the provision of gas service by multiple providers. The Commission noted that Minnesota statutes do not establish exclusive gas service areas or require that gas utilities get certificates of authority before piping into a new area, even one already served by another utility. The Commission concluded that any situation regarding multiple gas utility providers could be analyzed in rate case proceedings, on a case by case basis.

No ultimate judgment on this subject is required. First, while recognizing the negative potential cited above, the fact remains that there is no statutory prohibition against competition by two or more gas providers in the same territory. Moreover, it appears that the Commission has the capacity to balance the interests of the utilities, competed-for customers, and current customers on a case by case basis.

Order at p. 5.

The Commission sees no reason to change its policy developed in the generic investigation--the proper place to analyze the economic consequences of redundant piping is in a rate case proceeding. In a rate case proceeding, the Commission can examine the prudence of utility construction to determine if costs may be placed into rate base. The Commission can also determine if rates resulting from the service addition are just and reasonable. While the Commission sympathizes with the Department's desire to limit the extent of a rate case investigation, in this case there is no substitute for the full context of a rase case proceeding.

The Commission therefore finds that Peoples has not raised any economic issue which warrants further investigation at this time.

<sup>&</sup>lt;sup>2</sup> In the Matter of an Inquiry into Competition between Gas Utilities in Minnesota, Docket No. G-999/CI-90-563, ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET.

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#### D. Conclusion

Minnesota statutes do not block NSP from providing service to the Casselberry addition or Eagandale Center. Peoples' has failed in its attempt to invoke Minn. Stat. § 216B.01 to preclude NSP from constructing facilities. Peoples has not raised an issue which sustains its complaint or warrants Commission investigation or resolution at this time.

The Commission will therefore dismiss Peoples' complaint. Since the Commission has made no finding of imminent or irreparable harm, the Commission will not issue a cease and desist Order. Peoples' motion to expedite proceedings and request an interim cease and desist Order is denied.

#### <u>ORDER</u>

- 1. The Commission dismisses Peoples' complaint.
- 2. The Commission denies Peoples' Motion to Expedite Consideration of the Complaint and Request for an Interim Cease and Desist Order.
- 3. Docket No. G-011/C-96-1062 is closed.
- 4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

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Executive Secretary

(SEAL)

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IN THE MATTER OF PEOPLES NATURAL GAS COMPANY COMPLAINT AGAINST NORTHERN STATES POWER COMPANY

1 Service List

Burl W. Haar (15) Executive Secretary MN Public Utilities Commission Suite 350 121 East Seventh Place St. Paul, MN 55101-2147

Kathy Brengman (4) Docket Coordinator MN Department Of Public Service Suite 200 121 East Seventh Place St. Paul, MN 55101-2145

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**DOC Attachment B** Docket No. G011,002/17-305 Page 8 of 8

#### AFFIDAVIT OF SERVICE

I, Mary Swoboda, being first duly sworn, deposes and says:

That on the <u>21st</u> day of <u>October, 1996</u> she served the attached

#### ORDER DISMISSING COMPLAINT.

MNPUC Docket Number: G-011/C-96-1062

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid <u>\_\_XX</u>\_\_\_ By personal service By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners Carol Casebolt Peter Brown Ginny Zeller Dan Lipschultz Margie Hendriksen Janet Gonzalez Jerry Dasinger Bob Harding Al Bierbaum Karen Sletten Jean Dawson Legislative Reference Library Kathy Brengman - DPS Dennis Ahlers - OAG

<u>\_\_\_\_XX\_\_\_</u>

Dry Dudoda

Subscribed and sworn to before me, a notary public, this 2 day of 1996 Kry Public Not JANL' L F NOTARY PUBLIC - MILLINGUIA

RAMSEY COUNTY My Commission Expires Jan. 31, 2000

DOC Attachment C Docket No. G011,002/C-17-305 Page 1 of 13

#### BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm Tom Burton Joel Jacobs Marshall Johnson Dee Knaak

,

Chair Commissioner Commissioner Commissioner

In the Matter of an Inquiry into Competition Between Gas Utilities in Minnesota ISSUE DATE: March 31, 1995

DOCKET NO. G-999/CI-90-563

ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET

#### PROCEDURAL HISTORY

On June 28, 1990, the Commission issued its ORDER ASSERTING JURISDICTION AND ESTABLISHING COMMENT PERIOD In the Matter of the Joint Venture between Rahr Malting and Western Gas Utilities to Construct a Seven-Mile Gas Pipeline in Scott County, Minnesota, Docket No. G-012/DI-90-227 (the Rahr Malting docket). That docket concerned, among other things, competition between Minnegasco and Western Gas Utilities, Inc. (Western) for the same customers in Scott County, Minnesota. In its June 28 Order, the Commission sought input regarding the issue of two gas utilities competing for customers in the same area. All regulated gas utilities in Minnesota were asked to submit comments on the following two questions:

- 1. Will the "race" between Minnegasco and Western to capture new customers lead to a wasteful duplication of facilities? If so, does the Commission have the authority to prevent it?
- 2. Are the inducements currently offered by Minnegasco and Western to potential customers prohibited by their extension policies as approved by the Commission? If not, should the Commission attempt to impose stricter, more consistent policies on all regulated gas utilities?

All regulated gas utilities were also required under the June 28 Order to submit their current service extension tariffs and a description of their current service extension policies.

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The eight rate regulated gas utilities in Minnesota<sup>1</sup> submitted tariffs in response to the Commission's Order. All the utilities except Great Plains and Interstate submitted responsive comments.

On August 6, 1990, the Commission issued its ORDER APPROVING OWNERSHIP AND CAPACITY LEASE AGREEMENTS AND REQUIRING FILINGS in the Rahr Malting docket. In that Order, the Commission established the docket herein to address the general subject of competition among gas utilities.

On April 1, 1991, the Commission issued its ORDER CONCLUDING INVESTIGATION In the Matter of Midwest Gas Service Extension Complaints, Docket No. G-010/CI-90-148. In that Order the Commission deferred consideration of issues related to gas service extension to the current docket, G-999/CI-90-563. Complainants had raised concerns regarding the "levelization" of gas hookup charges between residential customers with small lots and those with large lots. The Commission felt that concerns regarding possible subsidization of large lot homeowners by small lot homeowners would be best addressed in the present generic investigation of competition among gas utilities.

On June 4, 1991, the Commission issued its ORDER INITIATING STUDY GROUP in this docket. The Commission found that a number of important policy issues had been raised in this matter and created a study group to look at those issues. Those issues were:

- 1. Is "levelization" or equal sharing of the costs of gas service extension for all new customers, whether with large lots or small, unfair to customers with smaller lots?
- 2. Is open competition between local distribution companies of benefit or a detriment to consumers?
- 3. Should the Commission encourage the use of natural gas fuel by facilitating the piping of more towns and allowing the companies to use incentives for new customers?
- 4. Does duplication of facilities by competing gas utilities result in economic waste or safety hazards?

<sup>&</sup>lt;sup>1</sup> At the time, there were eight: Minnegasco, Western, Great Plains Natural Gas Company (Great Plains), Interstate Power Company (Interstate), Midwest Gas Company (Midwest), Northern Minnesota Utilities (NMU), Northern States Power Company (NSP), and Peoples Natural Gas Company (Peoples). With the purchase and absorption of Midwest by Minnegasco, there are now seven.

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#### 5. Should there be a uniform service extension tariff and policy?

The study group met several times in 1991. All Minnesota local distribution companies (LDCs) and relevant state agencies were invited to attend these meetings. Various other interested parties were involved in the study group as either participants or invited speakers. In addition, all of the LDCs responded to a survey that asked about the areas in which they provide service and that are served by at least one other utility.

On February 24, 1995, Commission Staff served its Report on the Inquiry into Competition Between Gas Utilities on all parties to this proceeding, recommending that the docket be closed.

On March 23, 1995, the Commission met to consider this matter.

#### FINDINGS AND CONCLUSIONS

The question before the Commission at this time is whether this docket should be continued or closed. The Commission finds that this investigation should be terminated and the docket closed. The analysis supporting this conclusion examines the issues raised in the docket under three categories:

- 1) service to areas not currently served,
- 2) Commission response to multiple service providers in an area, and
- 3) review of LDC service extension contracts.

## A. SERVICE TO AREAS NOT CURRENTLY SERVED

A brief summary of the developments in this area subsequent to formation of the work group is in order:

The study group explored how to extend gas service to communities that request gas service but cannot be served economically at tariffed rates. In response to this question, three LDCs in 1991 proposed a surcharge mechanism to cover the cost of extending service to new communities.

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The Commission was encouraged by these attempts to respond to this problem but found it necessary to reject the three filings.<sup>2</sup> Instead, the Commission directed the Department and Commission Staff to conduct a study and file a report identifying the policy issues involved in establishing an appropriate regulatory framework for the provision of natural gas service in areas where service is not currently provided because it is not economically justified under currently tariffed rates.

On March 12, 1992, the Department and Commission Staff submitted their Report on Issues for New-area Rates. The report covered financial issues, rate design and various compliance and reporting issues concerning these new rates.

Subsequently, the Commission has received, reviewed and approved new area rates proposals from Northern Minnesota Utilities (NMU), Northern States Power, and Midwest Gas (now Minnegasco).<sup>3</sup> An additional new area rates proposal by Minnegasco is pending: Docket No. G-008/M-94-1075.

In view of these developments, the Commission finds that the question of how to encourage natural gas service to new areas has been adequately addressed.

<sup>2</sup> See the Commission's March 10, 1991 ORDER REJECTING PROPOSED TARIFFS AND REQUIRING REPORTS in three joined matters:

In the Matter of a Request by Peoples Natural Gas for Approval of a New Town Least Cost Energy Rate, Docket No. G-011/M-91-296; In the Matter of a Request by Northern Minnesota Utilities for Approval of a New Town Rate, Docket No. G-007/M-91-460; and In the Matter of a Request by Minnegasco for Approval of a New Area Surcharge, Docket No. G-008/M-91-575.

<sup>3</sup> In the Matter of a Request by Northern Minnesota Utilities for Approval of a New Town Rate, Docket No. G-007/M-92-212, ORDER APPROVING TARIFF WITH MODIFICATIONS AND REQUIRING FURTHER FILING (May 6, 1992); In the Matter of a Request by Midwest Gas Company for Approval of a New Town Rate Surcharge and a Request for Variance, Docket No. G-010/M-92-785, ORDER APPROVING TARIFF WITH MODIFICATIONS AND REQUIRING FURTHER FILINGS (November 10, 1992); and In the Matter of a Request from

Northern States Power Gas Utility for a

Miscellaneous Rate Change to Establish a New Area Surcharge, Docket No. G-002/M-94-156, ORDER APPROVING AND MODIFYING NEW AREA SURCHARGE TARIFF (May 13, 1994).

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#### B. SERVICE IN AN AREA BY MORE THAN ONE PROVIDER

Minnesota statutes have not established exclusive gas service areas nor required that gas utilities get certificates of authority from the Commission before extending service to any new area, whether that area is already served by another gas utility or not. Service to an area by more than one provider has occurred in approximately a dozen different places in Minnesota.

Sometimes, in a race to hook up new customers, LDCs drop the excess footage charges or offer to convert a customer's furnace and appliances to natural gas free of charge. On the surface it would appear that there might be wasteful duplication of service and higher per customer costs since there is duplication of large lateral mains running to the area and of regular mains when more than one utility is on the same street.

In addition, competitive situations can tempt utilities to "waive" certain tariffed charges for new customers to the detriment of their current customers. If an LDC, in a race to capture market share and expand its business, neglects to charge for service extensions that the tariffs indicate the LDC should be charging for, then the LDC's other customers wind up paying for the LDC's gain in market share because the excess facilities get put into rate base.<sup>4</sup>

On the other hand, it appears that allowing this level of competition may help promote wider access to natural gas, which is a substantially less expensive fuel than other fuel options such as propane and heating oil. In this light, providing access to natural gas for a greater number of people and, hence, reducing these customers' heating costs may, on balance, outweigh the concern that the competition may result in provision of service somewhat above the lowest possible cost.

No ultimate judgment on this subject is required. First, while recognizing the negative potential cited above, the fact remains that there is no statutory prohibition against competition by two or more gas providers in the same territory. Moreover, it appears that the Commission has the capacity to balance the interests of the utilities, competed-for customers, and current customers on a case by case basis.

<sup>&</sup>lt;sup>4</sup> See <u>In the Matter of the Petition of Midwest Gas to Change its Rates for Service</u> <u>Installations and Residential Gas Main Extensions</u>, Docket No. G-010/M-89-374, ORDER APPROVING TARIFF CHANGES AS MODIFIED (August 30, 1989).

## C. NEW CUSTOMERS' RIGHTS TO FAIR SERVICE EXTENSION POLICIES AND TARIFFS

Minnesota LDCs provide service to new customers under individual company service extension tariffs. The purpose of a tariffed service extension policy is to ensure that all new customers receive the same treatment. These tariffs specify what length and size of main and service line extension each new customer is entitled to receive without charge and how much they will have to pay for extensions that exceed the free footage allowance.

On the basis of its work in this docket, the Commission finds that its approach to designing LDC service extension rates and policies is reasonable. The Commission's method provides a balance between the two main approaches to service extension rate design.<sup>5</sup>

At the same time, the Commission clarifies that this docket has not reviewed each LDC's service extension policies and tariffs for consistency in terms of service, the fairness of refund provisions, and the inclusion of a customer financing option. The Commission believes that such reviews would be beneficial and will require them in future rate cases. In addition to such reviews, the Commission's Consumer Affairs Office will continue to handle any individual consumer complaints as appropriate.

With respect to the reviews to be conducted in future rate cases, the Commission would like the Department and the parties to address the following kinds of questions:

• Should the "free" footage or service extension allowance include the majority of all new extensions with only the extremely long extensions requiring a customer contribution-in-aid-of-construction (CIAC)?

<sup>&</sup>lt;sup>5</sup> The two main theoretical approaches are 1) the <u>rolled-in-rates</u> approach which allows LDCs to extend service to new customers without charge and 2) the <u>incremental-rates</u> approach which requires all new customers to pay their own way, i.e. the full cost of their service extensions, at the time they connect to the LDC's system. The method used by Minnesota LDCs is a compromise between these two opposing approaches.

The Minnesota approach recognizes that residents benefit from having access to natural gas service and Minnesota LDCs benefit from being able to provide that service. In addition, the LDC's policies try to balance the interests of existing customers with new customers so that both groups are able to receive reasonably priced service. Consideration is also usually given to making service extension polices as simple as possible for customers to understand and for utilities to administer.

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• How should the LDC determine the economic feasibility of service extension projects and whether the excess footage charges are collected?

• Should the LDC's service extension policy be tariffed in number of feet without consideration to varying construction costs amongst projects or should the allowance be tariffed as a total dollar amounts per customer?

• Is the LDC's extension charge refund policy appropriate?

• Should customers be allowed to run their own service line from the street to the house (or use an independent contractor) if it would be less expensive than having the utility construct the line?

• Should the LDC be required to offer its customers financing for service extension charges? This could be offered as an alternative to paying extension charges in advance of construction.

Finally, the Commission has concern about the impact of service extension-related additions (projects involving multiple customers) on the company's rate base. In future rate cases, the Commission will request the Department to investigate the company's service extension-related additions to rate base to make sure

- 1. that LDCs are applying their tariffs correctly and consistently,
- 2. that they are appropriately cost and load justified, and
- 3. that wasteful additions to plant and facilities are not allowed into rate base.

#### **D.** COMMISSION ACTION

On the basis of the foregoing review, the Commission finds that the issues raised in the course of this investigation either have been adequately addressed or are suitably pursued in other proceedings, as indicated in the text of this Order. Accordingly, the Commission will terminate its investigation and close this docket.

In future rate cases initiated by Minnesota regulated gas utilities, the Department and other parties to such proceedings will be invited to develop the record with respect to the issues raised in this Order. As is customary in such proceedings, the Commission's NOTICE AND ORDER FOR HEARING (referral to the Office of Administrative Hearings for contested case proceedings) will contain specific directives regarding issues to be addressed by the parties.

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## <u>ORDER</u>

- 1. The Commission's investigation into competition between gas utilities is hereby terminated and the docket created for it (G-999/CI-90-563) is closed.
- 2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar Executive Secretary

(SEAL)

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In the Matter of an Inquiry Into Competition Between Gas Utilities in Minnesota

1 Service List

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In the Matter of an Inquiry Into Competition Between Gas Utilities in Minnesota

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In the Matter of an Inquiry Into Competition Between Gas Utilities in Minnesota

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In the Matter of an Inquiry Into Competition Between Gas Utilities in Minnesota

1 Service List

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STATE OF MINNESOTA) )SS COUNTY OF RAMSEY )

#### AFFIDAVIT OF SERVICE

I, <u>Mary Swoboda</u>, being first duly sworn, deposes and says: That on the <u>31st</u> day of <u>March, 1995</u> she served the attached <u>ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET</u>.

MNPUC Docket Number: <u>G-999/CI-90-563</u>

- \_\_XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid
- XX By personal service
- <u>XX</u> By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Mike Michaud

Commissioners Carol Casebolt Peter Brown Ginny Zeller Dan Lipschultz Margie Hendriksen Rosellen Condon Janet Gonzalez Stuart Mitchell Bob Harding Kris Wenner Jean Dawson Legislative Reference Library Roxanne Colby - DPS Dennis Ahlers - OAG

Mary Dudroda

Subscribed and sworn to before me,

a notary public, this <u>31</u> day of

1995. cust. Notary Public



## CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

## Minnesota Department of Commerce Public Reply Comments

Docket No. G011, G002/C-17-305

Dated this 16th day of May 2017

/s/Sharon Ferguson

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