

## Staff Briefing Papers

Meeting Date November 17, 2022

Agenda Item 1\*

Company Paul Bunyan Natural Gas

Docket No. G-7066/EX-21-693

**In the Matter of an Inquiry into Exemptions for Small Gas Utility Franchises Under Minn. Stat. §216B.16, Subd. 12**

Issue 1. Should the Commission approve Paul Bunyan Natural Gas' request for a small gas utility franchise exemption under Minnesota Statute § 216B.16, subdivision 12 to serve City of Walker, MN and the surrounding areas?

Staff Sally Anne McShane [sally.anne.mcshane@state.mn.us](mailto:sally.anne.mcshane@state.mn.us) 651-201-2224

---



### Relevant Documents

### Date

Paul Bunyan Natural Gas Initial Filing	September 20, 2021
City of Walker Ordinance and Resolution 39-2019	September 20, 2021
Paul Bunyan Natural Gas Compliance Filings – Letter, Tariff Book, and Sample Bills	November 16, 2021
Department of Commerce – Division of Energy Resources Comments	January 21, 2022
Leech Lake Band of Ojibwe Comments	February 8, 2022
Paul Bunyan Natural Gas Reply Comments – Letter, Arrears Letter, and Service Territory Map	March 18, 2022

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us) for assistance.

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



**Relevant Documents**

**Date**

Department of Commerce – Division of Energy Resources  
Supplemental Comments

April 12, 2022

Paul Bunyan Natural Gas 2021 Annual Compliance Report

June 7, 2022

## I. Statement of the Issue

Should the Commission approve Paul Bunyan Natural Gas' request for a small gas utility franchise exemption under Minnesota Statute § 216B.16, subdivision 12 to serve the City of Walker, MN and the surrounding areas?

## II. Background

In Docket No. 18-770,<sup>1</sup> the Commission opened an inquiry into whether Northwest's three companies qualify as an Exempt Small Gas Utility (ESGU) per Minn. Stat. § 216B.16, Subd. 12.<sup>2</sup>

In the Department of Commerce's (Department) Information Request (IR) No. 9 in 18-770, Northwest provided a copy of the Franchise Resolution with the City of Walker, MN, which grants a franchise to Paul Bunyan Natural Gas (Paul Bunyan, PBNG, or Company) to install pipelines within the municipality and service customers in Walker with natural gas. In this IR, Northwest spoke about Paul Bunyan Natural Gas:

This system has not been constructed yet. Northwest Natural Gas, LLC, has formed a 50/50 partnership with Northern Star Cooperative Services, Inc., to build and operate the new system. The name of that new partnership is Paul Bunyan Natural Gas, LLC. ... Paul Bunyan Natural Gas, LLC, has secured a franchise from the City of Walker to serve these prospective customers.<sup>3</sup>

The Department recommended that Paul Bunyan should file an exemption request.

Ordering Paragraph 8 of the Commission's June 22, 2021, Order reads:

Paul Bunyan Natural Gas, LLC, shall file its present and anticipated 2022 customer counts, a thorough description of its corporate and operational relationship to Northwest, and, if applicable, a small gas utility exemption request, within 90 days.<sup>4</sup>

On September 20, 2021, Paul Bunyan filed a small gas utility exemption request. The Company serves the City of Walker and the surrounding areas. It currently serves 361 customers with 272 customers within the city and 89 outside of the city (otherwise known as incidental).<sup>5</sup> Paul Bunyan expects to have 600 customers by the end of 2022. The request was filed with resolutions from the City of Walker and the city council.

---

<sup>1</sup> G-6278, G-6279, G-6280/CI-18-770 In the Matter of an Inquiry into Exemptions for Small Gas Utility Franchises Under Minn. Stat. § 216B.16, Subd. 12, for Gorham's Inc., Northwest Natural Gas, LLC, Northwest Natural Gas of Murray County, Inc., and Northwest Natural Gas of Cass County LLC.

<sup>2</sup> Minn. Stat. § 216B.16, Subd. 12 Exemption for small gas utility franchise.  
(<https://www.revisor.mn.gov/statutes/cite/216B.16#stat.216B.16.12>)

<sup>3</sup> Department comments, October 2, 2020, Department Attachment 10, p. 2 of 4.

<sup>4</sup> Docket No. G-6278, G-6279, G-6280/18-770 Commission Order Accepting Filing and Establishing Additional Requirements, June 22, 2021, p. 14.

<sup>5</sup> Note that Paul Bunyan's 2021 annual compliance report, filed June 7, 2022 has updated customer counts ending December 31, 2021.

PBNG is a joint venture between Gorham's, Inc. dba Northwest Gas and Northern Star Cooperative Services, Inc. with each party owning a 50% share. The Company has a five-member board of directors.

PBNG does not have any full-time employees. Day-to-day operations are mostly provided by Northern Star Cooperative with support and training from Northwest Gas. Labor costs are billed to PBNG at cost plus markup for benefits and overhead.

### III. Parties' Comments

#### A. Department of Commerce Comments

The Department filed comments about Paul Bunyan's franchise petition on January 21, 2022. They determined that the Company fulfilled the reporting requirements from the Commission's June 22, 2021, Order in Docket 18-770.

The Department is using the following requirements from Docket No. 17-829 – Lake Region Energy Services (LRES)'s request for ESGU status – to analyze whether PBNG qualifies for an exemption:

- Does the applicant meet the requirements that it serve less than 650 customers?<sup>6</sup>
- Has the applicant received a franchise granted by the municipality to operate a local natural gas distribution in the municipality's borders?
- Does the municipality support the applicant's request to be exempt from Commission rate regulation?
- Did the applicant provide a tariff/rate book that delineates its relationship with its customers?
- Does the proposed tariff/rate book include all the Commission required non-rate related statutory and administrative requirements?<sup>7</sup>

Because the Commission has been interested in incidental customers in the past, in analyzing PBNG's customer count, the Department examined the percentage of customers receiving incidental service and noted that approximately 25% of PBNG's customers are incidental. Amongst the other ESGUs, the average percentage of incidental customers is approximately 13% but that the Company does not have the highest percentage out of all the exempt gas companies.

PBNG supplied copies of a City of Walker ordinance that awarded a franchise to operate a natural gas distribution utility in Walker and a resolution that requested the Commission to approve the Company's request to be exempt from rate regulation.

Paul Bunyan provided a copy of its tariff/rate book. The Department found it to be consistent with other ESGU tariffs.

---

<sup>6</sup> The statutory requirement is 650 customers *within a municipality*.  
(<https://www.revisor.mn.gov/statutes/cite/216B.16#stat.216B.16.12>)

<sup>7</sup> Department comments, January 21, 2022, p. 3.

In IR responses, the Company also submitted its emergency management plan in detail.<sup>8</sup>

The Commission's November 9, 2018, Order<sup>9</sup> established six annual regulatory reporting requirements for EGSUs. There were changes to the final three in the September 7, 2021, Order.<sup>10</sup> Between the two Orders, the requirements are as follows:

- Updated customer counts, plus a statement that the utility does not discriminate between in-muni/out-muni customers, and if it does, why;
- Any municipality-approved rate changes that occurred in the prior year and when those changes went into effect;
- All changes to its tariff book in redlined and final revised tariff form;
- Future small gas utility franchise annual compliance filings shall provide copies of the utilities' tariffs reflecting Minn. Stat. §§ 216B.096 and 216B.097 legislatively mandated changes to extend the Cold Weather Rule period to October 1 to April 30 for residential customers, as well as copies of any updated cold weather disconnection notices;
- Future small gas utility franchise annual compliance filings shall provide customer counts reflecting the number of person or businesses served (i.e. customers) rather than a customer count based on the number of meters; and
- Future small gas utility franchise annual compliance filings shall provide the following: updated total customer counts for all municipal franchises, the number of customers service under each municipal franchise, and the number of customers served outside of each municipality's border that the utility claims are incidental.<sup>11</sup>

The Department asked Paul Bunyan for the following in its reply comments:

- 1) Any rate changes approved by the City of Walker in 2021;
- 2) Copy of the form sent to customers in arrears that are not covered by the Cold Weather Rule;
- 3) Customer count based on number of customers, not meters;<sup>12</sup>
- 4) A map of its proposed service territory; and

---

<sup>8</sup> Department comments, January 22, 2022, Attachment E, pp. 1-2.

<sup>9</sup> Docket Nos. G6915/M-13-672, G6956/M-15-856, G6960/M-16-214, G6915/M-16-756 and G6977/M-17-186 November 9, 2018 Order Determining Compliance with Commission Orders and Establishing Filing Requirements, pp. 4-5.

<sup>10</sup> Docket Nos. G6915/M-13-672, G6956/M-15-856, G6960/M-16-214, G6915/M-16-756 and G6977/M-17-186 September 7, 2021 Order Approving 2021 Compliance Filings and Adopting Future Filing Requirements, p. 4.

<sup>11</sup> Department comments, January 22, 2022, p. 5.

<sup>12</sup> Updated customer counts for all municipal franchises are not required, because Paul Bunyan Natural Gas Company is a stand-alone enterprise.

- 5) A description of its current system for tracking customer complaints<sup>13</sup> properly per Minn. Rule 7820.0400<sup>14</sup> or a request for a variance from this rule by the Commission.

## **B. Leech Lake Band of Ojibwe**

On May 7, 2022, the Leech Lake Band of Ojibwe (Leech Lake) submitted comments. Leech Lake spoke about a meeting with the PUC in fall 2021. At that time, the PUC expressed an interest in reviewing how Leech Lake's Tribal Employment Rights Ordinance (TERO) could be used in other dockets as it was by Enbridge Energy (Enbridge) in the Line 3 project.

Leech Lake said that TERO could be tested in this docket because, like Enbridge, a gas line company is seeking a permit to conduct operations with new and ongoing maintenance within the Leech Lake Reservation.

Leech Lake wrote that TERO law has jurisdiction over all employers operating within the boundaries of the reservation, but:

TERO jurisdiction covering employers working on fee land projects has been greatly reduced by the **Montana v. U. S. A.** case. Note: After **Montana**, TERO Law is now "CONSENTUAL", typically made as a contract requirement with contractors, service providers and other employers by the Leech Lake Band of Ojibwe, Federal Agencies, State Agencies and Local Governments at the time of granting commercial contracts thus TERO law is accepted formally by agreement.<sup>15</sup>

Leech Lake stated that a tribe's authority is grounded in sovereign self-government. It is supported by many Supreme Court decisions. Leech Lake wrote that:

One important area in which the inherent powers of tribes/villages governments should clearly apply is in the right of tribes to regulate and tax all commerce activity within the jurisdictional boundaries of their reservations/villages.<sup>16</sup>

The TERO ordinance sets conditions for employers performing work on reservations, establishes authority for the TERO commission and staff to enforce the TERO ordinance, assigns responsibility to the TERO commission and staff, delineates penalties for employers that violate tribal law, and provides due process for all parties involved in compliance or violation of disputes.

While Leech Lake filed a letter in this docket, they wrote that it served a greater purpose to provide information on TERO with the goal of developing a broader approach to advance employment and opportunities for Band members.

---

<sup>13</sup> Department comments, January 22, 2022, Attachment E, pp. 1-2. The Company responded that it does not maintain a log of customer complaints received but works with customers as complaints arise. It does not have any unresolved complaints at this time.

<sup>14</sup> Minn. Rule 7820.0400 Complaint Records (<https://www.revisor.mn.gov/rules/7820.0400/>)

<sup>15</sup> Leech Lake Band of Ojibwe comments, March 7, 2022, p. 2. (Emphasis is from party comments.)

<sup>16</sup> Leech Lake Band of Ojibwe comments, March 7, 2022, p. 2.

### **C. Paul Bunyan Natural Gas Reply Comments**

In response to the Department's requests, Paul Bunyan replied accordingly:

- 1) There were no proposed 2021 rate changes; therefore, none were approved by the City of Walker.
- 2) Paul Bunyan submitted a copy of its arrears letter.<sup>17</sup> The Company noted that the submitted notice is different from its Cold Weather Rule notice; also, this notice was modified to inform customers about additional Energy Assistance funds that are available due to COVID-19.
- 3) PBNG confirmed that the customer count provided was based on the number of customers, not meters.
- 4) A map of the Company's current service territory was included in the filing.<sup>18</sup> PBNG noted that the blue lines are existing mains, and the dashed pink lines are planned construction for summer 2022.
- 5) The Company has begun tracking customer complaints manually per Minn. Rule 7820.0400 restrictions. PBNG is working with its billing software vendor to see whether its existing system can be modified to capture and report customer complaints.

Regarding Leech Lake Band's comments, Paul Bunyan stated that:

While we respect the Band's right to seek compliance with their TERO laws, we do not believe such compliance affects our eligibility for ESGU status. We therefore request that, if the Commission does grant ESGU status to PBNG, our ESGU status will not be contingent upon any express or implied agreement to compliance with TERO laws.<sup>19</sup>

### **D. Department of Commerce Supplemental Comments**

The Department supported Leech Lake's request to develop a record regarding TERO:

The Department recommends the Commission issue a Notice and Request for Comments from interested parties on the Leech Lake Band of Ojibwe's request that PUC regulatory determinations consider compliance with TERO when utilities operate within the reservation, and whether such consideration is in the public interest.<sup>20</sup>

The Department confirmed that Paul Bunyan has submitted all requested information for eligibility for ESGU status. The Department concluded that Paul Bunyan has met the requirements for ESGU status under Minn. Stat. §216B.12 Subd. 12, but the Department will not make a recommendation on the Company's ESGU status until the Commission has resolved Leech Lake's suggestion of Northwest implementing TERO.

---

<sup>17</sup> Paul Bunyan Natural Gas Reply Comments, March 18, 2022 (separately filed document).

<sup>18</sup> Paul Bunyan Natural Gas Reply Comments, March 18, 2022 (separately filed document).

<sup>19</sup> Paul Bunyan Natural Gas Reply Comments, March 18, 2022, p. 1.

<sup>20</sup> Department of Commerce Supplemental Comments, April 12, 2022, p. 6.

#### **IV. Staff Analysis**

Paul Bunyan Natural Gas has submitted all materials for eligibility for ESGU status and has nothing outstanding. Therefore, staff concludes that the Company qualifies as an Exempt Small Gas Utility per Minn. Stat. § 216B.12 Subd. 12 and past Commission Order.

Staff conferred with the Commission's Consumer Affairs Office (CAO) on complaints lodged with the Company. CAO has not mediated any complaints with Paul Bunyan Natural Gas or its parent company, Northern Star Cooperative. However, CAO has mediated two customer complaint with Paul Bunyan's other parent company, Northwest Natural Gas. One in 2019 was regarding a debt transfer, and one in 2020 was a Cold Weather Rule appeal.

Staff notes that the Commission is currently working with Leech Lake, as well as other Tribal governments, on best practices to incorporate TERO and other interests of the tribes into Commission dockets and procedure. As this work is ongoing, staff does not recommend opening a docket related to TERO at this time.

#### **V. Decision Options**

1. Approve Paul Bunyan Natural Gas' petition for a small gas utility franchise exemption under Minn. Stat. § 216B.16 Subd. 12. (PBNG)

**AND**

2. Require Paul Bunyan Natural Gas to annually report on the following:

- A. Updated customer counts that reflect the total number of persons or businesses (i.e. customers), rather than meters, served across all municipalities; the number of total customers for served for each municipal franchise; the number of customers served that are outside of a municipality that the utility claims is incidental; plus a statement that the utility does not discriminate between in-muni/out-muni customers, and if it does, why;
- B. Any municipality-approved rate changes that occurred in the prior year and when those changes went into effect;
- C. All changes to its tariff book in redlined and final revised tariff form;
- D. Copy of any updated cold weather disconnection notices;
- E. Date and delivery method of Cold Weather Rule disconnection notice;
- F. Copy of any utility disconnection reports served to any of municipalities required by statute;
- G. Copy of customer past due/arrearage forms; and
- H. Copy of any policy not included in tariffs related to budget billing plans, payment arrangements, and under-charge repayments. (DOC)

**OR**



3. Deny Paul Bunyan Natural Gas' petition for a small gas utility franchise exemption under Minn. Stat. § 216B.16 Subd. 12.

*Staff supports Decision Options 1 and 2.*