

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben  
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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of Minnesota  
Energy Resources Corporation for Approval  
of a Recovery Process for Cost Impacts Due  
to February Extreme Gas Market Conditions

ISSUE DATE: October 19, 2022

DOCKET NO. G-011/CI-21-611

In the Matter of a Commission Investigation  
into the Impact of Severe Weather in  
February 2021 on Impacted Minnesota  
Natural Gas Utilities and Customers

DOCKET NO. G-999/CI-21-135

ORDER ADOPTING SETTLEMENT  
AGREEMENT

**PROCEDURAL HISTORY**

**I. Introduction**

In February 2021, cold weather across much of the United States led to increased demand for natural gas and, in some areas, supply disruptions. An extreme rise in natural gas prices ensued. Minnesota's regulated gas utilities maintained continuous service to customers during this period, but some incurred unprecedented costs purchasing gas on the spot market. Under Commission rules, such costs ordinarily would be billed to ratepayers through an automatic purchased-gas-adjustment mechanism over the next 12-month period beginning on September 1 each year. However, the extreme circumstances in this case prompted the Commission to initiate an investigation.

On March 2, 2021, the Commission opened an investigation into the effects of the event and directed the impacted natural gas utilities within its rate-regulatory jurisdiction<sup>1</sup> to file information regarding the reasons for and details of the price spike, the utilities' responses to the spike, and customer impacts, as well as the utilities' gas supply planning and purchasing

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<sup>1</sup> The affected natural gas utilities are CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas (CenterPoint); Northern States Power Company d/b/a Xcel Energy (Xcel); Minnesota Energy Resources Corporation (MERC); Great Plains Natural Gas Co. (Great Plains).

strategies and how the utilities could or should alter those strategies in anticipation of increasingly frequent extreme weather-related events.<sup>2</sup>

## **II. Purchased Gas Adjustment**

Total annual gas costs are reviewed when utilities file their annual automatic adjustment (AAA) reports by September 1 each year. AAA reports include detailed information about all automatic adjustments made in the 12-month period from July 1 of the previous year to June 30 of the reporting year.<sup>3</sup> The reports show, by customer class, the difference between gas costs actually incurred and those collected from ratepayers and include a proposed plan to reconcile (true-up) this difference through a bill surcharge or refund over the next 12-month billing cycle.<sup>4</sup>

Given the magnitude of under-recovered costs incurred during February 13–17, 2021 (the February Event), the likelihood of rate shock, and the need to mitigate customer impacts, the affected utilities proposed variances to the Commission’s automatic-adjustment rules to authorize them to separately track their extraordinary gas costs from the February Event and recover those costs over an extended period, using a surcharge separate from the AAA true-up mechanism.

## **III. Variance Requests and August 30, 2021 Order**

On July 6, 2021, in Docket No. G-999/CI-21-135, Minnesota Energy Resources Corporation (MERC) identified \$64,975,882 in February 2021 gas costs that it stated it would seek to recover through the AAA true-up mechanism.

On August 30, 2021, the Commission issued an order granting a rule variance and approved a special surcharge that distributes extraordinary costs over an extended, 27-month period on a seasonally adjusted schedule designed to mitigate ratepayer impacts by reducing the size of each monthly surcharge and by reducing the surcharge rate in the winter, when many customers incur higher gas bills to serve heating needs.<sup>5</sup>

For purposes of the variance and the special recovery mechanism, the Commission defined “extraordinary gas costs” or “extraordinary costs” as the margin between \$20.00 per Dekatherm (Dth) and the actual average price paid by the utilities during the February Event.<sup>6</sup>

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<sup>2</sup> *In the Matter of a Commission Investigation into the Impact of Severe Weather in February 2021 on Impacted Minnesota Natural Gas Utilities and Customers*, Docket No. G-999/CI-21-135, Order Opening Investigation (March 2, 2021).

<sup>3</sup> Minn. R. 7825.2810; Minn. R. 7825.2910, subp. 4.

<sup>4</sup> Minn. R. 7825.2700, subp. 7; Minn. R. 7825.2810; Minn. R. 7825.2910, subp. 4.

<sup>5</sup> Order Granting Variances and Authorizing Modified Cost Recovery Subject to Prudence Review, and Notice of and Order for Hearing at 20–21, Ordering Paras. 6–11.

<sup>6</sup> *Id.* at 20, Ordering Para. 3. The total claimed extraordinary gas costs are: \$64,975,882 for MERC; \$408,755,953 for CenterPoint; \$178,978,695 for Xcel; and \$8,827,249 for Great Plains. *Id.*, Ordering Para. 4.

The Commission’s decision precluded the utilities from charging ratepayers interest or financing costs related to the extraordinary gas costs,<sup>7</sup> and it exempted certain low-income customers from the surcharge.<sup>8</sup> With these limitations, the Commission authorized utilities to begin recovering extraordinary costs from customers through the approved surcharge mechanism pending the prudence review. The order emphasized that each utility bears the burden to prove the prudence and reasonableness of its costs; any costs not proven to be prudent and reasonable would be disallowed or refunded to customers.

#### **IV. Proceedings Before the Administrative Law Judges**

As part of its decision granting the rule variances described above, the Commission issued an order referring the matters to the Office of Administrative Hearings for contested-case proceedings to develop the record on whether each utility acted prudently in relation to the event and whether it is just and reasonable for each utility to recover its extraordinary costs from ratepayers.<sup>9</sup> The investigations proceeded jointly in four utility-specific Commission dockets: G-011/CI-21-611 (MERC); G-008/M-21-138 (CenterPoint); G-004/M-21-235 (Great Plains); and G-002/CI-21-610 (Xcel).<sup>10</sup>

The Office of Administrative Hearings assigned Administrative Law Judges Jessica A. Palmer-Denig and Barbara J. Case to hear these matters.

From October 2021 through February 2022, the following parties filed written direct, rebuttal, and surrebuttal testimony:

- The affected gas utilities, jointly and individually;
- The Citizens Utility Board of Minnesota (CUB);
- The Department of Commerce, Division of Energy Resources (the Department); and
- The Office of the Attorney General—Residential Utilities Division (the OAG).

On February 17–18 and 22, 2022, the Administrative Law Judges (ALJs) held evidentiary hearings.

A public comment period was open from February 7 through March 4, 2022, and remote-access public hearings were held on March 3. After the comment period closed, members of the public continued to submit written comments into August.

On March 15, 2022, MERC, CenterPoint, Great Plains, Xcel, CUB, the Department, and the OAG filed initial post-hearing briefs and proposed findings of fact.

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<sup>7</sup> *Id.* at 21, Ordering Para. 16.

<sup>8</sup> *Id.*, Ordering Para. 12.

<sup>9</sup> Order Granting Variances and Authorizing Modified Cost Recovery Subject to Prudence Review, and Notice of Order for Hearing (August 30, 2021).

<sup>10</sup> The Commission will address the results of each investigation in a separate, utility-specific order in each utility’s respective docket.

On March 25, 2022, MERC, Xcel, CenterPoint, Great Plains, CUB, the Department, and the OAG filed reply briefs.

## **V. Proceedings Before the Commission**

On May 24, 2022, the ALJs issued four sets of Findings of Fact, Conclusions of Law, and Recommendations (ALJ Reports), each specific to one utility. The ALJ Reports concluded that each of the affected utilities acted prudently and recommended that they should recover their extraordinary costs from ratepayers in their entirety.

On June 3, 2022, the Department, OAG, CUB, and the City of Minneapolis filed exceptions disagreeing with the ALJ Reports. MERC; CenterPoint; Great Plains; Xcel; and the Laborers' International Union of North America, Minnesota and North Dakota filed letters recommending that the Commission adopt the ALJs' findings, conclusions, and recommendations.

On August 4 and 11, 2022, the Commission heard oral argument from and asked questions of the parties. On August 11, the record closed under Minn. Stat. § 14.61, subd. 2.

## **FINDINGS AND CONCLUSIONS**

### **I. Introduction**

#### **A. The Legal Standard**

Under Minn. Stat. § 216B.03,

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers.... Any doubt as to reasonableness should be resolved in favor of the consumer....

When a utility proposes annual purchased-gas-cost-adjustments to recover or refund amounts for gas purchases made in the 12 month period between July 1 and June 30 of the preceding year, the proposal is governed by the Commission's rules, Minn. R. 7825. Minn. R. 7825.2390 explains the purpose of the relevant rule parts:

The purpose of parts 7825.2390 to 7825.2920 is to enable regulated gas and electric utilities to adjust rates to reflect changes in the cost of energy delivered to customers from those costs authorized by the commission in the utility's most recent general rate case. Energy costs included in rate schedules are subject to evidentiary hearings in general rate cases filed by the utility. Proposed energy cost adjustments must be submitted to the Department of Commerce. Annual evaluations of energy cost adjustments are made by the Department of Commerce and others as provided for in parts 7825.2390 to 7825.2920.

When a utility proposes new or revised electric energy or purchased gas adjustment provisions, the proposal is considered a change in rates and must be reviewed according to commission rules and practices relating to utility rate changes.<sup>11</sup>

## **B. Burden of Proof**

The burden is on the utility to prove its costs were incurred prudently and will result in just and reasonable rates.<sup>12</sup> Any doubt as to reasonableness is to be resolved in favor of the consumer.<sup>13</sup> There is no burden on agencies or other intervenors to precisely identify which imprudent actions caused which costs in order to justify a disallowance.<sup>14</sup> Merely showing that the utility incurred expenses does not meet the utility's burden of demonstrating that it is just and reasonable for ratepayers to bear those expenses.<sup>15</sup>

## **C. Prudence Standard**

When evaluating whether costs are just and reasonable, the Commission determines whether a utility acted prudently in incurring the costs. In this proceeding, the prudence standard is not in dispute among the parties.

Generally, prudence is reasonable action taken in good faith based on knowledge available at the time of the action or decision. Actions taken in good faith are those taken without malicious intent, exercising the care that a reasonable person would exercise under the same circumstances at the time the decision was made. It is not evaluated using the benefit of hindsight.

Under this standard, the Commission evaluates actions of the Gas Utilities based on whether each action and decision was reasonable at the time, under all the circumstances, and based on the information that was or should have been known.

## **II. The Administrative Law Judge's Report**

The ALJs held three days of evidentiary hearings and two public hearings. They reviewed the testimony of expert witnesses and examined exhibits. They made some 340 findings of fact, 7 conclusions, and recommendations on all stipulated and contested issues based on those findings and conclusions.

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<sup>11</sup> Minn. R. 7825.2390.

<sup>12</sup> Minn. Stat. § 216B.16, subd. 4.

<sup>13</sup> Minn. Stat. § 216B.03.

<sup>14</sup> *In the Matter of a Commission Investigation into Xcel Energy's Monticello Life-Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, Docket No. E-002/CI-13-754, Order Finding Imprudence, Denying Return on Cost Overruns, and Establishing LCM/EPU Allocation for Ratemaking Purposes, at 13 (May 8, 2015).

<sup>15</sup> *See In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987).

Having examined the record and having considered the report of the Administrative Law Judges, the Commission concurs in many of their findings and conclusions and will accept, adopt, and incorporate their findings, conclusions, and recommendations to the extent they are consistent with the decisions herein.

### **III. Public Comments**

Members of the public submitted comments throughout these proceedings. Virtually all of these commenters supported disallowing recovery of some or all of the extraordinary gas costs incurred by one or more of the affected gas utilities during the February Event.

Generally, these commenters contended that the utilities did not act prudently to protect customers from extraordinary gas costs and that it would be unjust and unreasonable to pass these costs on to customers, who were in no position to avoid or mitigate the costs. Many commenters expressed that it would be difficult or impossible for them to pay these additional costs and that the utilities were in a better position to absorb the financial impact. Some commenters also criticized the gas utilities' failure to communicate with customers before or during the February Event to encourage conservation measures that could have mitigated costs by reducing the total load the utilities needed to serve during the high-price period and relieved some of the demand-related pressure on market prices.

### **IV. The Department of Commerce**

The Department of Commerce plays a uniquely pivotal role in the evaluation of utilities' annual automatic adjustments reports by receiving and closely evaluating the filings and ultimately making recommendations to the Commission.<sup>16</sup> The Department's application of its expertise in analyzing the filings facilitates a careful, comprehensive, and thorough examination that informs the Commission's weighing of evidence, as well as the balancing of the interests of the utility company and its customers. The Commission appreciates the extensive analysis undertaken by the Department to fulfill its role in the record development process in this case.

### **V. Background on Gas Purchasing During the February Event**

The extraordinary costs at issue before the Commission result from gas purchases MERC made on the daily spot market to serve its Minnesota customers during the February Event.

Minnesota gas utilities purchase natural gas from various gas-producing regions and transport it via pipeline to serve customers in Minnesota. Gas purchases can be made for baseload (on a monthly or seasonal basis) or on the daily spot market. The primary trading hubs for the affected Minnesota gas utilities are Ventura (located in Iowa), Demarc (located in Kansas), and Emerson (located at the U.S.-Canada border near North Dakota).

The natural gas daily spot market typically operates in a day-ahead fashion, meaning trades occur on the business day before delivery. The market does not formally operate on weekends or holidays, so trades preceding weekends or holidays usually cover the period through the next

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<sup>16</sup> Minn. R. 7829.2390.

business day. Purchases covering weekends and holidays also must be “ratable,” which means the buyer must purchase the same volume of gas for each day of that period.

The extraordinary gas costs at issue in this order, totaling \$64,975,882, came from transactions made on two occasions.

First, on the morning of Friday, February 12, 2021, MERC purchased gas on the daily spot market for the four-day period of February 13–16. This four-day period included a weekend, the Presidents’ Day holiday on Monday, and the next business day, which was Tuesday. The Company was required to purchase the same volume of gas for each of these four days. Accordingly, MERC determined the volume of spot gas to purchase for the February 13–16 period based on its need to serve the projected coldest day of that period, February 14.

Second, on the morning of Tuesday, February 16, MERC purchased gas on the daily spot market for February 17 only. These transactions covered only one day and were not required to match the volumes purchased for any other day.

Gas may be purchased on the daily spot market at a “firm” price agreed upon between a buyer and seller, or at the “index” price, which is an average of the firm transactions for that purchasing period at each hub. During the February Event, MERC purchased spot-market gas at the index price. During the February 13–16 period, index prices reached \$154.9/Dth at Ventura; \$231.7/Dth at Demarc; and \$6.2/Dth at Emerson.<sup>17</sup>

In addition to baseload supply and daily spot purchases, utilities have various tools they can use to provide price stability and ensure reliability including gas storage and interruptible service agreements that allow the utility to call on certain customers, who have agreed to the term in exchange for lower rates, to temporarily curtail their gas usage.

The parties recommending disallowances generally contended that MERC imprudently purchased excessive volumes of gas on the daily spot market at extraordinarily high prices as a result of the Company’s failure to prudently utilize curtailment, produce a more accurate load forecast, and engage in financial hedging (actions taken to reduce risk).

## **VI. MERC’s Natural Gas Distribution System**

MERC is a public utility delivering natural gas supply to approximately 243,000 customers in Minnesota. To serve its customers, MERC relies on the following four pipelines:

- Centra Pipeline (Centra) extends from Spruce Manitoba, Canada, into Minnesota from Warroad to Baudette. Centra is used to serve communities in Northern Minnesota.
- Viking Gas Transmission Pipeline (Viking) extends from Emerson (TransCanada) on the U.S. side to serve MERC’s customers from Ada to Camp Ripley.

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<sup>17</sup> For comparison, the index price at Demarc was as low as \$2.5/Dth at the beginning of February 2021. Prior to the February Event, the Ventura hub had only ever priced gas above \$10/Dth in the winters of 2013–14, 2014–15, and 2017–18. The previous record-high index price at Ventura was approximately \$65/Dth for the three-day delivery period of December 29–31, 2017, during a short-term price spike related to extreme cold weather that occurred over a holiday weekend.

- Great Lakes Transmission Pipeline (Great Lakes) extends from Emerson (TransCanada) on the U.S. side to serve MERC's customers from Thief River Falls to Cloquet.
- Northern Natural Gas (NNG or Northern) Pipeline extends from Ventura in Iowa and Demarcation (Demarc) (near Clifton, Kansas), which is the transfer point for gas coming north from NNG's Field area to NNG's Market area, to serve MERC's customers in Southern Minnesota

The first three of these pipelines serve an area within MERC's service territory called MERC-Consolidated. The NNG Pipeline serves an area called MERC-NNG. In nearly all instances, MERC's customers are served solely by a specific pipeline. Because these two service territories are geographically separate, they do not share pipeline capacity, storage, or natural gas supplies.

## **VII. Settlement Agreement**

In this case, the parties – the Department, CUB, the OAG, and MERC – reached a settlement agreement addressing the primary areas of dispute: curtailment, load forecasting, and hedging. In reaching the settlement, the Company agreed to forgo recovery of \$3 million of \$64,975,882 in extraordinary costs arising from the February Event. No party objected to this resolution of the disputed issues.

The Commission recognizes that resolving disputed issues in utility proceedings is fundamentally different from resolving disputes between private litigants:

[T]he Commission must apply a different standard than is normally used by the courts. Unlike the traditional function of civil courts, the Commission's primary function is not to resolve disputes between litigants. Instead, it is an affirmative duty to protect the public interest by ensuring just and reasonable rates.<sup>18</sup>

The Commission is authorized to accept, reject, or modify any agreement by the parties. It can accept agreements upon finding that to do so is in the public interest and is supported by substantial evidence.

The settlement agreement was filed after the Commission received the ALJs' Report, and as a result, there is no recommendation from the ALJs on the merits of the agreement.

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<sup>18</sup> *In the Matter of a Petition by the U.S. Department of Defense, the General Services Administration, and All Other Federal Executive Agencies of the United States Challenging the Reasonableness of the Rates Charged by Northwestern Bell Telephone Company*, Docket No. P-421/CI-86-354, Order Accepting Offer of Settlement (February 11, 1987) at 3; *see also In the Matter of the Application of Interstate Power Company for Authority to Change its Rates for Natural Gas Service in the State of Minnesota*, Docket No. G-001/GR-90-700, Order Accepting and Adopting Stipulation and Offer of Settlement (June 27, 1991) at 6–7.



## **A. Curtailment**

The Department recommended a disallowance of \$958,307 due to MERC's decision not to curtail customers on February 17 when it was technically feasible to do so, and the Company knew that prices would continue to remain extraordinarily high. The Department calculated the recommended amount based on an assumed volume of curtailments equal to 50% of the usage of interruptible customers. Assuming MERC should have avoided purchasing that volume of gas in the daily spot market by planning to curtail customers, the Department multiplied that volume by the average daily price MERC paid in the spot market for February 17 to determine the proposed disallowance amount.

CUB recommended larger disallowances, totaling approximately \$4,165,683, stating that the Company should have curtailed 50% of its interruptible customers for all five days between February 13 and 17. CUB recommended that if the Commission finds that MERC only acted imprudently on February 17, that the Commission disallow \$902,791.

Both the Department and CUB claimed that MERC's decision not to curtail customers was imprudent and resulted in the unreasonable purchase of spot gas that would otherwise have been avoided. They stated that under its tariff, MERC was authorized to curtail under these circumstances; the tariff states, in part, "[C]ustomers under this rate schedule are subject to interruption at any time upon order of MERC."

In response, the Company stated that its decision not to curtail was based on its application of existing tariff language and its practice not to do so for economic reasons. The Company stated that its tariffs do not expressly authorize curtailment for economic reasons and that historically, the Company has only curtailed for operational reasons to address capacity constraints.

The ALJs recommended no disallowance, finding that MERC acted prudently and consistent with its tariff in deciding not to curtail at any time during the February Event.

## **B. Load Forecasting**

Both the Department and CUB recommended disallowances based on the Company's load forecasting, which they said was unreasonable because it included only a partial adjustment reflecting lower usage by its transportation customer class (customers who procure natural gas utilizing the natural gas utility's distribution system to receive it). The Company's February 17 forecast was partially informed by usage from the preceding four days; the actual load for those days showed a reduction in usage by the transportation class.

According to the Department, the Company's reduction made to the transportation load was not applied to the system-wide forecast for February 17. As a result, the Company's forecast inflated its need and caused it to procure 20% more gas for February 17 than the day prior. Reliance on this load forecast, the Department asserted, was unreasonable particularly in light of the warmer weather forecast for that day. Further, the Department stated that the Company's reserve margin of 10% for February 17 was substantially higher than the 2% more commonly used to protect customers from variances between forecasts and actual demand. The Department therefore recommended a disallowance in the amount of \$9,707,206 for spot purchases made based on the higher load forecast and reserve margin used by the Company.

The Department calculated the proposed disallowance by estimating the reduction in the transportation customer sales forecast based on the prior day's forecast and applying that reduction to the system-wide forecast to derive a reduced sales customer forecast. The reduction in the sales customer forecast equals a reduction in spot gas purchases, which are priced at MERC NNG's daily average spot gas price for February 17.

CUB echoed the Department's assertions that the Company's load forecast was inaccurate and that reliance on it resulted in spot gas purchases on February 17 that the Company should have avoided. CUB stated that the forecasting margin of error exceeded 14%, the difference between the forecast relied on for purchases and the actual load but given the complexity of forecasting, CUB also acknowledged that it would be reasonable to hold the Company accountable only if an error exceeded 5%. As a result, CUB recommended a disallowance of \$3,903,233, calculated by assigning a 5% forecasting error, with a reserve margin of between 2.85% and 10.44% (MERC's planned reserve margin).

The Company maintained that its load forecast was in line with the information available, namely that the Company removed transportation volumes from its forecast based on the prior day's scheduled delivery for those customers and that it had no basis to believe that transportation customers would use less than their nominations on February 17. Variability in transport volumes is unpredictable, and the Company stated that it was unable to further modify its forecast to account for the additional decrease in actual load at the time it made its forecast and spot market purchases.

The ALJs recommended no disallowance, stating that the uncertainty and complexity surrounding forecasting at the time of the February Event made it difficult for the Company to predict precisely what load would be needed, how far temperatures would drop, and how much supply would be sufficient.

### **C. Financial Hedging**

The OAG recommended that the Commission disallow, based on various assumptions, between \$7 million and \$64,975, 882 million in extraordinary gas costs for MERC's failure to engage in financial hedging prior to the February Event.

The OAG claimed that MERC acted imprudently by failing to engage in financial hedging practices that would have mitigated or completely offset the extraordinary gas costs incurred during the February Event.

The OAG defined hedging as a tactical action undertaken with the intent of reducing the risk of losing money. The OAG's expert, Brian Lebens, testified that MERC should have utilized exchange-traded hedges, customizable over-the-counter products, and hedged swing contracts to avoid the extreme price spikes during the February Event. Lebens theorized that MERC's failure to proactively utilize the risk-mitigating hedging practices he advanced justifies a disallowance of between \$7 and \$8.8 million in extraordinary costs.

While the OAG recognized that utilities had limited options to financially hedge once the market became aware of extreme prices, the OAG maintained that the gas utilities should have secured

hedging opportunities well in advance of the February Event so that they would have had the tools in place to adequately mitigate impacts of the extreme prices.

In response to the OAG's recommended disallowance, MERC stated that it engages in hedging for a portion of its gas supply portfolio in accordance with parameters, limitations, and reporting requirements, and that its practices are subject to regular review and approval by the Commission. MERC stated that it has implemented a hedging plan for 60% of normal winter volumes – 30% through physical storage and 30% through financial instruments (approximately 10% futures and 20% options). The Company hedges winter months with hedging contracts executed in the preceding summer months. Specific to 2021, MERC purchased winter financial contracts (November 2020–March 2021) by the end of October 2020, hedging against monthly price volatility.

The Company also stated that there was no reasonable or viable scenario under which it could have mitigated its daily price risk exposure through the use of financial hedging instruments, which do not generally provide daily price mitigation.

The ALJs concurred with the Company that it was not reasonable to expect hedging to be utilized to offset the extraordinary spike in the cost of natural gas on the spot market. They concurred with MERC that using hedging was not a practical or available option for daily price mitigation at the time the Company made its purchases.

### **VIII. Commission Action**

Having reviewed the settlement, along with the testimony, briefs, and oral arguments of parties, participants, and members of the public, the Commission finds that the settlement is supported by substantial evidence, is in the public interest, and should be adopted.

While the Department, CUB, and the OAG initially recommended higher disallowances than the amount agreed to through settlement, they encouraged the Commission to adopt the settlement as a way to ameliorate the burden on ratepayers, considering the evidence weighing in favor of disallowances.

MERC maintained its position that its actions leading up to the February Event were prudent and reasonable, and the Company gave no admission to the contrary in reaching the settlement.

The Commission concurs that the settlement achieves a reasonable reduction in cost recovery while simultaneously enabling the Company to recover a meaningful portion of its costs. In adopting the settlement, the Commission declines to reach a judgment on the merits of whether MERC's decisions were prudent and reasonable during the February Event but recognizes that there is supporting evidence to find that the Company did not take, but could have taken, action to alleviate *some* portion of the burden of rate impacts to its customers that would have resulted in a \$3 million disallowance—the amount of reduced cost recovery agreed to in the settlement—of the \$64,975,882 originally sought by the Company.

In addition to adopting the settlement agreement, the Commission will require MERC to make a compliance filing within 60 days addressing recovery of the remaining costs incurred and will delegate authority to the Executive Secretary to approve the filing. Any remaining true-up must

be addressed in MERC's next annual AAA report filed after the end of the extraordinary costs' recovery period.

## **IX. Prospective Investigation**

The Commission will also require the affected gas utilities to take action to prevent or reduce impacts of future extreme weather and market events on Minnesota's ratepayers and utilities. As extreme weather events become more frequent due to climate change, it is vital that utilities act to protect ratepayers from reoccurrences similar to the February Event.

To that end, the Commission will require MERC to review its practices relating to gas contracting, purchasing, hedging, storage, curtailment, customer communications, and other relevant practices and file a plan explaining how it will improve or modify its practices to protect ratepayers from extraordinary natural gas price spikes in the future.

As a part of its plan, the utility shall identify the general timeframe in which it will implement the modifications. If plan implementation would require modification of tariff language, the utility shall provide proposed tariff language with its plan. Additionally, the utility should include in its filing a discussion of how integrated resource planning could facilitate ratepayer protection from price spikes, and it should identify any statutory or rule changes that could be implemented to protect ratepayers from future price spikes.

MERC should also provide an analysis of whether it considered filing a performance-based gas purchasing plan pursuant to Minn. Stat. § 216B.167. If it has chosen not to proceed with a performance-based gas purchasing plan under that section, it should provide an analysis explaining that decision.

Further, the utility should explain how any proposed tariff, rule, or statutory changes are consistent with the Natural Gas Innovation Act, Minn. Stat. §§ 216B.2427 and 216B.2428.

The Commission will require MERC to file its plan in Dockets No. G-011/CI-21-611 and G-999/CI-21-135. Reply comments will be due by October 14, 2022. The Commission will hold hearings on the plans on or before December 9, 2022.

The Commission previously contemplated convening a stakeholder group to examine prospective changes in natural gas supply planning. However, based on further discussions and information developed through these proceedings, the Commission has determined that the plan-submission process described above is a more efficient and effective way to pursue the same goals. Accordingly, the Commission will rescind ordering paragraph 26 of the August 30, 2021 order.

The Commission so orders.

## **ORDER**

1. The Commission adopts the parties' settlement agreement.
2. The Commission adopts the Administrative Law Judges' Findings of Fact, Conclusions of Law, and Recommendation to the extent they are consistent with the decisions herein.

3. Within 60 days, MERC must file a compliance filing that updates the remaining recovery amount and recovery factors for the remaining 27-month recovery period.
4. The Commission delegates authority to the Executive Secretary to approve the compliance filing.
5. MERC must incorporate any remaining true-up into its next annual AAA report following the end of the 27-month period.
6. MERC must review its gas contracting, purchasing, hedging, storage, peak-shaving, interruptible, customer communications, and other relevant practices and, file a plan in Docket Nos. and G-011/CI-21-611 and G-999/CI-21-135 on how it will improve or modify its practices to protect ratepayers from extraordinary natural gas price spikes in the future. As part of its plan, the utility shall identify the general timeframe it will implement the modifications, and, if the proposed change requires modification of tariff, proposed tariff language. The utility should also identify, in its filings: a) how integrated resource planning could facilitate ratepayer protection from price spikes; and b) any statutory or rule changes that could be implemented to protect ratepayers from future price spikes. The utility should also provide an analysis of whether it considered filing a plan pursuant to Minn. Stat. § 216B.167 (Performance-Based Gas Purchasing Plan) and its analysis of why it is not using the statute if it has chosen not to proceed with such a plan. The utility should also explain how any proposed tariff, rule, or statutory changes are consistent with the Natural Gas Innovation Act (Minn. Stat. §§ 216B.2427 and 216B.2428). Reply comments to the utility plans will be due by October 14, 2022. The Commission will hold hearings on these plans on or before December 9, 2022.
7. The Commission rescinds ordering paragraph 26 of the Commission's August 30, 2021 order in Docket Nos. G-999/CI-21-135, G-008/M-21-138, G-004/M-21-235, G-002/CI-21-610 and G-011/CI-21-611, regarding a stakeholder group.
8. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert  
Executive Secretary



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## **CERTIFICATE OF SERVICE**

I, Chrishna Beard, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Minnesota Public Utilities Commission**  
**ORDER ADOPTING SETTLEMENT AGREEMENT**

Docket Number **G-011/CI-21-611, G-999/CI-21-135**  
Dated this 19th day of October, 2022

/s/ Chrishna Beard

[illegible]

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