STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph Sullivan	Commissioner
John Tuma	Commissioner

IN THE MATTER OF A COMMISSION INVESTIGATION INTO THE IMPACT OF SEVERE WEATHER IN FEBRUARY 2021 ON IMPACTED MINNESOTA NATURAL GAS UTILITIES AND CUSTOMERS	MPUC Docket No. G-999/CI-21-135
IN THE MATTER OF THE PETITION OF CENTERPOINT ENERGY FOR APPROVAL OF A RECOVERY PROCESS FOR COST IMPACTS DUE TO FEBRUARY EXTREME GAS MARKET CONDITIONS	MPUC Docket No. G008/M-21-138

Answer of the Citizens Utility Board of Minnesota

I. INTRODUCTION

In February 2021, Winter Storm Uri caused temperatures to plummet across much of the United States. These widespread cold temperatures caused demand for natural gas to increase as households and businesses consumed more gas for heating purposes. Meanwhile, the cold weather also caused "freeze off" events at some natural gas generation and transportation systems—particularly in Texas and other southern states—which reduced the available supply of natural gas. Finally, Winter Storm Uri coincided with the Presidents Day Holiday weekend, when there were limited opportunities for natural gas purchases and sales. These coinciding factors caused natural gas prices to spike to historic levels between February 12-17, 2021 (the "February Event").

After the February Event, four of Minnesota's rate-regulated natural gas utilities, CenterPoint Energy Resources Corp. ("CenterPoint" or "the Company"); Northern States Power Company d/b/a Xcel Energy ("Xcel"); Minnesota Energy Resources Corporation ("MERC"); and Great Plains Natural Gas Co. ("Great Plains" and, collectively with CenterPoint, MERC, and Xcel, the "Gas Utilities") sought to recover from their Minnesota ratepayers millions of dollars in extraordinary costs that they incurred when purchasing gas at inflated spot market prices during the February Event (the "Extraordinary Costs"). Due to the dollar amounts involved and factual complexity of this event, the Minnesota Public Utilities Commission (the "Commission") referred these matters to a contested case hearing. Along with the

four Gas Utilities, the Citizens Utility Board of Minnesota ("CUB", "we", "us", "our") was among the parties to that contested case.

During the contested case proceeding, the Gas Utilities, CUB, the Minnesota Department of Commerce (the "Department,") and the Minnesota Office of the Attorney General ("OAG") collectively filed hundreds of pages of witness testimony, record evidence, and legal briefs outlining their positions. Collectively, these materials formed a highly robust record that was considered by two administrative law judges and, ultimately, the Commission over a ten-month period.

At a hearing held on August 11, 2022, the Commission determined that CenterPoint had met its burden of proof demonstrating that the vast majority of its Extraordinary Costs were prudently incurred, but that it had failed to meet that burden with respect to *all* Extraordinary Costs. Consequently, on October 19, 2022 the Commission issued an order (the "October 19 Order" or the "Order") that preserved the Company's ability to recover approximately $373 million of its Extraordinary Costs and disallowed recovery of approximately $35.7 million in Extraordinary Costs. The Commission's disallowances were linked to the Commission's findings that the Company failed to prove it acted prudently with respect to its Waterville/Medford storage facility, its BP Canada Storage facility, its peaking facilities, and its curtailment practices during portions of the February Event.[1]

On November 8, 2022, the Company filed a petition (the "Petition")[2] requesting that the Commission amend its October 19 Order to: (1) "find that CenterPoint Energy met its burden to demonstrate that its actions with respect to its use of storage, use of peak shaving facilities, and curtailment of interruptible customers during the February Market Event were prudent" and (2) "find that it is reasonable for the Company to recover all of its extraordinary gas costs incurred during the [February Event]".[3] As detailed below, the Petition does not raise any new issues, uncover errors or ambiguities within the October 19 Order, or present any new relevant evidence that could—or should—lead the Commission to rethink its prior decision. Consequently, the Commission should remain unpersuaded by the Company's Petition and uphold the effectiveness of its original October 19 Order.

[1] *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions,* Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action, Docket No. G008/M-21-138 at 30-31 (Oct. 19, 2022) (hereinafter "October 19 Order").
[2] *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. G999/CI-21-135; and *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions*, Docket No. G008/M-21-138, CenterPoint Petition for Reconsideration (Nov. 8, 2022) (hereinafter "CenterPoint Petition for Reconsideration").
[3] CenterPoint Petition for Reconsideration, at 26.

II. LEGAL STANDARD

A. Burden of Proof

As articulated by the Commission in its October 19 Order:[4]

> The burden is on the utility to prove its costs were incurred prudently and will result in just and reasonable rates.[5] Any doubt as to reasonableness is to be resolved in favor of the consumer.[6] There is no burden on agencies or other intervenors to precisely identify which imprudent actions caused which costs in order to justify a disallowance.[7] 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.[8]

B. Requests for Reconsideration

Petitions for Reconsideration are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. Pursuant to Minn. Stat. § 216B.27, the Commission "*may* grant and hold a rehearing on the matters . . . if *in its judgment* sufficient reason therefor exists."[9] As further explained in Minn. Stat. § 645.44, the use of "may" indicates *permissive* action, as opposed to the mandatory terminology of "must" or "shall."[10] Consequently, the Commission is in its power to reject a Petition for Reconsideration and uphold its original Order.[11]

When Petitions for Reconsideration are filed, the petitioner must "set forth specifically the grounds relied upon or errors claimed."[12] Generally, the Commission "reviews such petitions to determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision."[13] If a Petition for Reconsideration is ultimately granted, Minnesota Statutes establish the standard for review and provide the Commission with permissive authority to "reverse, change, modify, or suspend [its] original action" if, based on the Commission's judgment, "it shall

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[4] October 19 Order, at 5.
[5] Minn. Stat. § 216B.16, Subd. 4.
[6] Minn. Stat. § 216B.03.
[7] *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 (May 8, 2015), at 13.
[8] *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987).
[9] Minn. Stat. § 216B.27, Subd. 1 (emphasis added).
[10] Minn. Stat. § 645.44, Subds. 15-16.
[11] *See, e.g. In the Matter of a Formal Complaint and Petition for Expedited Relief by Sunrise Energy Ventures LLC Against Northern States Power Company d/b/a Xcel Energy*, Docket No. E-002/C-21-160, Order Denying Reconsideration (Oct. 11, 2021) (finding its decision to be "consistent with the facts, the law, and the public interest," and denying the petition for reconsideration).
[12] Minn. R. 7829.3000, Subp. 2.
[13] *In the Matter of Xcel Energy's Petition for Approval of Electric Vehicle Pilot Programs*, Docket No. E-002/M-18-643, Order Denying Reconsideration, Denying Stay, and Approving Compliance Filing, at 3 (Oct. 7, 2019).

appear that the original decision, order, or determination is in any respect unlawful or unreasonable."[14]

III. ANALYSIS

It is indisputable that, as a matter of law, the burden is on the Company to prove the Extraordinary Costs it seeks to recover were incurred prudently and will result in just and reasonable rates and that any doubt as to reasonableness is to be resolved in favor of the consumer. This is a high burden. In the contested case proceeding that informed the Commission's October 19 Order, the Company offered substantial evidence to try to overcome any doubt that the Company acted prudently prior to and during the February Event. Intervenors offered contrary evidence that the Company failed to prudently manage its gas resources and purchasing. Ultimately, the Commission determined that the Company met its burden with respect to $373 million—or 91.3 percent— of its Extraordinary Costs. The Company now asks the Commission to reconsider whether an additional $35.7 million should be passed through to its customers. In making that request, the burden remains with the Company to prove that these costs were prudently incurred and will result in just and reasonable rates, with any doubt resolved in favor of the consumer. The Company now also has the added burden of demonstrating that the Commission's prior Order warrants reconsideration.

The Company argues that "reconsideration should be granted as the findings and conclusions in the Commission's October 19 Order are inconsistent with the legal standard for prudence, the record evidence, and the public interest in ensuring safe and reliable natural gas service in Minnesota" and to "correct certain errors in the Commission's Order."[15] Specifically, the Company contests the Commission's Waterville/Medford storage facility disallowance of $3,810,503, its BP Canada storage utilization disallowance of $12,195,499, its peaking plant disallowance of $12,431,429, and its curtailment disallowance of $7,279,482.[16] These contested amounts represent the entirety of the recovery disallowed by the Commission in its Order, but represent only 8.7 percent of the total Extraordinary Costs of $409 million incurred by the Company.[17]

A. The Company's petition does not raise new issues.

One factor that the Commission should consider when determining whether to allow reconsideration is "whether the petition . . . raises new issues" that were not addressed in its previous Order.[18] In its Petition, the Company reiterates, in summary form, the arguments that it has previously offered via written comments, expert witness testimony, legal briefs, and oral arguments that were all part of the substantial record reviewed by the Commission prior to its issuance of the October 19 Order. We do

[14] Minn. Stat. § 216B.27, Subd. 3.
[15] CenterPoint Petition, at 4.
[16] *See generally,* CenterPoint Petition.
[17] October 19 Order, at 30-31.
[18] *In the Matter of Xcel Energy's Petition for Approval of Electric Vehicle Pilot Programs*, Docket No. E-002/M-18-643, Order Denying Reconsideration, Denying Stay, and Approving Compliance Filing, at 3 (Oct. 7, 2019).

not believe the purpose of a reconsideration petition, or our response thereto, is to relitigate the same issues that have already been addressed in a lengthy contested case proceeding. The Commission has previously considered the arguments raised by the Company in its Petition and addressed them in its October 19 Order. That said, we feel the need to respond to some arguments the Company raises in its Petition that we find particularly troubling.

i. The Commission does not misapply the prudence standard.

The Company claims that, for several reasons, the October 19 Order is inconsistent with the prudence standard.[19] Specifically, the Company argues that (1) the Commission's order neglects to mention that "the second element of the prudence standard is that there is a range of actions that are reasonable and prudent, not one singular prudent action or decision;"[20] (2) the Commission relied on hindsight when determining the Company failed to prove it acted prudently;[21] and (3): "the Commission's disallowances rely on potential alternative prudent actions that the Company could have taken, as offered by the intervenors" and that such alternatives "require that the Company had perfect foresight to predict how all of the factors required to maintain adequate gas supplies to meet its customers' needs would play out during the February Market Event."[22] Each of these arguments fails to raise new issues that warrant reconsideration.

First, the Commission's Order includes numerous, clear examples of the Commission applying the prudence standard to consider a range of actions that are reasonable and prudent rather than one singular prudent action or decision. In several instances, this application of the prudence standard worked in favor of the Company. For example, when assessing the Company's decision not to maximize Ventura swing volumes for February 14, the Commission determined the Company acted "within the range of acceptable conduct under the circumstances."[23] When assessing the Company's decision to reserve its peaking plants, the Commission noted it "is not persuaded that CenterPoint's decision to reserve its peaking plants to address potential reliability issues on February 13–16 fell outside of the wide range of reasonable conduct based on the information and uncertainty that existed when decisions for the four-day period were being made on February 12."[24] When assessing the Company's financial hedging strategies, the Commission noted that "CenterPoint's financial hedging strategy leading up to the event was within the range of prudent conduct for a similarly situated utility under the circumstances."[25] We see no reason to think the Commission misunderstood or misapplied this element of the prudence standard in its Order.

[19] CenterPoint Petition for Reconsideration, at 4.
[20] CenterPoint Petition for Reconsideration, at 5.
[21] CenterPoint Petition for Reconsideration, at 4.
[22] CenterPoint Petition for Reconsideration, at 4.
[23] October 19 Order, at 14.
[24] October 19 Order, at 19.
[25] October 19 Order, at 28.

Second, the October 19 Order clearly articulates the analysis the Commission conducted when determining the Company failed to meet its burden to prove it acted prudently throughout the February Event based on information known or knowable by the Company at the time. The Commission balanced the utility's need to consider threats to reliability against the potential financial harm that could result from dramatically increasing prices. This is exemplified in the following language from the October 19 Order:

> By the morning of February 16, CenterPoint had observed unprecedented prices in the spot market, and it had already spent hundreds of millions of dollars to purchase gas for only four days. Moreover, there was substantial reason to expect prices would remain exceptionally high on February 17. Some areas had seen supply restrictions over the long weekend due to gas production failures and controlled power outages that affected wellhead operations, processing facilities, and gas pipelines. Temperatures were forecasted to remain unusually cold in the south-central United States on February 17, adding demand pressure to the prices amid supply constraints. The ongoing market volatility further increased the risk that spot-market prices would remain extremely high on February 17.
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> […]
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> The Commission recognizes the gravity of the utility's obligation to provide safe and reliable service, and it commends CenterPoint for achieving that objective for Minnesota customers throughout the February Event. But this obligation does not obviate the requirement that all rates charged to customers, including purchased-gas adjustments, must be just and reasonable. [26]

The Commission's weighing of these diverse factors is a process that the Company should have undertaken in the first instance to satisfy its statutory obligation to provide "safe, adequate, efficient, and reasonable service"[27] at just and reasonable rates.[28] Considering the substantial impact that costs would have on customers is an essential part of utility service.

Third, we strongly disagree with the assertion that "the Commission's disallowances rely on potential alternative prudent actions that the Company could have taken, as offered by the intervenors" and that such alternatives "require that the Company had perfect foresight."[29] Prudency reviews are inherently backward-looking—they cannot be done in real time as the Company is making decisions. However, that does not suggest that intervenors' witnesses assessed prudence in a way that would require the Company to have had perfect foresight. As CUB Witness, Ron Nelson testified:

[26] October 19 Order, at 19.
[27] Minn. Stat. § 216B.04.
[28] Minn. Stat. § 216B.03.
[29] CenterPoint Petition for Reconsideration, at 4.

> No utility could reasonably be expected to perfectly predict the future. This is why hindsight is explicitly considered insufficient evidence for prudence determinations. Both my testimony and that of Bradley Cebulko focus on whether utilities acted reasonably based on what they "knew or should have known" at the time, as well as how they responded to certain circumstances that could not have reasonably been anticipated, such as the scale of the unprecedented price increases, once these conditions materialized.[30]

The Department's witness, Matthew King, made similar statements in his testimony.[31]

Similarly, quantifying disallowances necessarily entails assessing the costs of imprudent actions by comparing them with hypothetical prudent alternatives. However, this comparison is not *determinative* of prudence or imprudence. In other words, neither the intervenors' witnesses nor the Commission calculated what the Company's Extraordinary Costs were and what they might have been under an alternate scenario, *then* retroactively determined the Company acted imprudently because it failed to take the action that would result in the lower number. Rather, intervenor witnesses—and ultimately the Commission—assessed the Company's actions based on what was known or should have been known at the time those actions were taken. From those analyses, the Commission determined whether the Company reasonably balanced its obligations under the totality of the circumstances to provide safe, reliable, *and affordable* services to its customers. That evaluation balanced the real, potential risk of service disruption against the real, known risk of historically high spot market prices. To the extent the Commission determined that the Company had not meet its burden to prove it acted prudently, *then* the Commission relied on record evidence offered by interveners to assess the consequences of those actions and quantify reasonable disallowances. In its Petition, the Company incorrectly conflates this quantification of disallowances with a determination of prudence.

ii. CenterPoint has not proven its plan to deploy its peak-shaving facilities to address system reliability was prudent.

The Commission disallowed recovery of $12.4 million of the extraordinary gas costs CenterPoint Energy incurred to serve customers during the February Market Event because the Company failed to meet its burden to demonstrate its decision not to use peak shaving facilities on February 17 was prudent.[32] The Company argues that, in making this determination, the Commission "disregards the impacts of [potential supply disruptions and cold weather] on reliability"[33] and inappropriately relied on hindsight to support its peak shaving disallowance.[34] Specifically, the Company argues that "the Commission's Order reflects the unsupported conclusion that since the Company was, in fact, able to reliably serve its customers there must never have been any real risk to reliability" and that "[t]he

[30] Ex. 810 at 24-25 (Nelson Direct).
[31] *See, e.g.*, Ex. 506 at 28 (King Direct).
[32] October 19 Order, at 19.
[33] CenterPoint Petition for Reconsideration, at 19.
[34] CenterPoint Petition for Reconsideration, at 21.

magnitude of the supply cuts, customer usage, and weather, are all facts that are only known with the benefit of hindsight.[35] This argument mischaracterizes the October 19 Order by simultaneously oversimplifying and overstating the Commission's conclusions.

As stated previously, the October 19 Order contains clear examples (including those provided above) of the Commission evaluating the Company's decision-making based on what the Company knew or should have known prior to and during the February Event. Here too, the Commission evaluated the entirety of the record when determining the Company failed to meet its burden with respect to utilizing peak-shaving resources. The Commission expressly recognized the prevalence of supply restrictions over the holiday weekend, the existence of multiple operational concerns, and the potential continued impacts of the February Event leading into February 17.[36] While the Company minimizes the Commission's statement that reliability concerns "do[] not obviate the requirement that all rates charged to customers . . . must be just and reasonable," this element of the Commission's Order is an essential aspect of utility service that the Company should have included when determining how to utilize peaking resources on the morning of February 16.[37] Thus, far from minimizing reliability concerns, the Commission's October 19 Order recognized that the Company should have engaged in a comprehensive analysis of its available options, and that its "failure to reevaluate the suitability of its strategies . . . fell short of the threshold of prudent conduct."[38]

The Commission October 19 Order entails the sort of weighing of the information that the Company should have undertaken in the first instance. When potential cost impacts were included in its analysis, the Commission determined that a "prudent utility . . . would have planned to dispatch some peak-shaving resources on February 17 to reduce the volume of spot gas purchased at extremely elevated market prices."[39] Thus, contrary to the Company's argument that the Commission failed to evaluate its actions with respect to the "care that a reasonable person would exercise under the same circumstances,"[40] the October 19 Order shows that the Commission *did* consider whether a reasonable utility would have acted in the same way as the Company.

Based on this overarching consideration of the available information, the Commission noted that "[t]he record demonstrates that fully dispatching the LNG plant on February 17 would have achieved meaningful cost savings for customers while preserving a reasonable level of capacity and flexibility to resolve potential reliability issues that could have arisen during the February Event, with ample resources remaining for the rest of the season."[41] In other words, the Commission evaluated the Company's decisions based on what was known or should have been known at the time about ongoing cold weather, supply constraints, potential threats to reliability, *and* historically high spot prices. The

[35] CenterPoint Petition for Reconsideration, at 22.
[36] October 19 Order, at 19.
[37] October 19 Order, at 19.
[38] October 19 Order, at 19.
[39] October 19 Order, at 19.
[40] CenterPoint Petition for Reconsideration, at 20 (quoting the October 19 Order, at 5).
[41] October 19 Order, at 19.

Commission's weighing of these diverse factors balances the requirements of providing reliable service and charging just and reasonable rates.[42]

iii. CenterPoint has not met its burden to prove it acted prudently with respect to curtailment.

The Company argued that it prudently curtailed interruptible customers consistent with its tariff and past practice.[43] In support of this assertion the Company argues—as it has numerous times previously in the record— that "the Company's interruptible tariff lacks any criteria such as a threshold gas price that would trigger price-based curtailments and because such price-based curtailments had never before been issued by the Company, customers could not have reasonably expected to be called upon to curtail their natural gas usage in response to prices."[44] For reasons CUB has raised repeatedly throughout this proceeding, this argument is a red herring that should be soundly rejected. Customers taking service under CenterPoint's interruptible tariffs pay a discounted rate in return for accepting that they are required to "curtail the use of gas on one (1) hours' notice when requested by CenterPoint Energy" and that "CenterPoint Energy can interrupt [the] End User if capacity constraints require *or for other appropriate reasons*" (emphasis added).[45] The Company has not pointed to any criteria establishing objective thresholds that must be reached before CenterPoint can call for curtailments, or how any tariff language limits the broad discretion afforded to the Company. The Company has not adequately explained why "other appropriate reasons" should be read to exclude historically high natural gas prices, *particularly* when those high natural gas prices coincided with—and were caused in part by—supply disruptions. Independently of pricing issues, these supply issues prompted CenterPoint to curtail several of its interruptible customers during the February Event. Suggesting that the tariff language somehow prohibited CenterPoint from calling for additional curtailments during the February Event is illogical and not supported by the record.

Moreover, the Company speculates that its interruptible customers would have been surprised to be curtailed during the February Event and that the "level of customer compliance" with such calls was likely to substantially differ from interruptible customers' prior practices. The Company has not cited any record evidence supporting this speculation, other than to note it has not previously called for curtailments on purely economic grounds. There *is* evidence in the record of interruptible customers expressing frustration over not being called to curtail, given what CenterPoint knew going into and during the February Event. In Exceptions to the ALJ Report filed on June 3, 2022, the City of Minneapolis noted that it has sixteen CenterPoint accounts with interruptible gas service and that "CenterPoint

[42] *See* October 19 Order, at 19 (noting that "[u]nder the extraordinary circumstances, it was imprudent for CenterPoint to adhere to its ordinary practice of holding 100% of its peak-shaving facilities in reserve to address unanticipated reliability issues while using none of these resources to help maintain just and reasonable rates").
[43] CenterPoint Petition for Reconsideration, at 22.
[44] CenterPoint Petition for Reconsideration, at 23.
[45] Ex. 801 at 63 (Cebulko Direct) (citing CenterPoint Energy Gas Rate Book at Section V p. 4, p.5, p.6, p.7, p.19.a, Section VII p. 1.a, p. 2.a, p. 3.a, p. 5.a, p. 10.b).

failed to request that [the City] curtail at any of [those] 16 locations during the pricing Event."[46] Consequently, "Minneapolis and other interruptible commercial customers were unfairly denied the opportunity to curtail and reduce costs based on pricing information that the utility had access to."[47] During a Commission hearing held on August 4, 2022, the City's representative, Stacy Miller, noted that City employees "had many hours of internal discussion regarding [potential curtailments], from our Energy Manager to the Water Department, the Convention Center—all stood by ready to curtail."[48] When Commissioner Tuma asked whether the City would have viewed an economic curtailment as a violation of the filed rate doctrine, Ms. Miller replied, "[n]o we wouldn't have, because we take seriously the… responsibility the utilities have to manage resources in a way that protects ratepayers and leads to just and reasonable rates."[49] The City is now paying $500,000 in additional costs as a result of the February Event.[50] According to Ms. Miller's comments during the August 4 hearing, that amount would increase if the Commission reconsiders its decision and permits the Company to fully recover its Extraordinary Costs.[51]

The Company's claims that economic curtailments were unwarranted because they would be inconsistent with past practice is similarly insufficient to demonstrate prudence under the totality of the circumstances during the February Event. As the Commission noted, "[d]espite the knowledge that it had already spent extraordinary amounts of its customers' money on historically costly spot gas over the holiday weekend, CenterPoint did not make *any* use of its expansive curtailment rights to mitigate further financial consequences for customers [and instead] adhered to its ordinary practices, purchased high-priced spot gas for customers that had agreed to interruptible service, and even released from curtailment the small number of customers it had interrupted during February 13–16 to address localized distribution issues."[52] Just because a utility had not previously taken an action does not inherently suggest the utility is incapable of that action, or that a Company acted prudently by maintaining the status quo amidst highly unusual circumstances that demanded proactive action. As the Department noted in its Arguments and Exceptions to the ALJ Reports filed in these dockets:

> The Gas Utilities must operate their businesses prudently. This means applying their technical expertise and industry experience to changing market and weather conditions to deliver safe and reliable service at just and reasonable rates. Acting prudently requires constant

[46] *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions,* City of Minneapolis Exceptions to the ALJ Report, Docket No. G008/M-21-138, at 1 (June 3, 2022).
[47] *Id*.
[48] *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions,* Comments of City of Minneapolis Representative Stacy Miller before the Commission, Docket No. G008/M-21-138, beginning at 1:33 (Aug. 4, 2022).
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] October 19 Order, at 25.

reassessment as facts and circumstances change. For this proceeding, the Gas Utilities alone bear the burden to prove that they did so.[53]

The Commission concluded that, based on the Company's knowledge about historically high spot prices and other ongoing concerns about the February Event, the Company did not meet its burden to demonstrate it acted prudently when planning for February 17 and not calling for additional curtailments.[54] The Company's Petition raises no new arguments that would now show it has met this burden. Because the Commission adequately evaluated the Company's actions and no new issues were raised that should alter the Commission's determinations, reconsideration is not warranted.

B. The Company's petition does not point to new and relevant evidence.

In its Reconsideration Petition, the Company cites several exhibits filed in the relevant dockets, the Administrative Law Judges' Report dated May 24, 2022 (the "ALJ Report"), transcripts from the Evidentiary Hearing, and prior Commission orders filed in these dockets. All of this evidence was part of the substantial record considered by the Commission prior to issuing its October 19th Order. The Company has not introduced any new or relevant evidence not previously part of the record considered by the Commission.

C. The Company's petition does not expose errors or ambiguities in the underlying order.

When considering whether to grant reconsideration, the Commission will look to whether the Petition "exposes errors or ambiguities in the underlying order."[55] The Company argues that "Reconsideration is also warranted to correct certain errors in the Commission's Order."[56]

In addition to generally disagreeing with the Commission's analyses and disallowance determinations, the Company argues that the Commission's "inconsistent conclusions regarding Xcel Energy and CenterPoint Energy are arbitrary and not supported by the record."[57] The Company grounds this claim in a comparison of the Commissions disallowances with respect to the utilities' utilization of peaking resources during the February Event. Namely, the Company argues "[t]here is no justification in the Commission's Orders, nor evidence presented in the record, to justify the Commission's conclusion it was reasonable and indeed necessary for CenterPoint Energy to have dispatched 100 percent of its LNG plant on February 17, while for Xcel, 50 percent dispatch of its LNG plant would have been

[53] *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to Feb. Extreme Gas Mkt. Conditions,* Exceptions of the Minnesota Department of Commerce, Division of Energy Resources, Docket No. G-008/M-21-138 (June 3, 2022).
[54] October 19 Order, at 25.
[55] *In the Matter of Xcel Energy's Petition for Approval of Electric Vehicle Pilot Programs*, Docket No. E-002/M-18-643, Order Denying Reconsideration, Denying Stay, and Approving Compliance Filing, at 3 (Oct. 7, 2019).
[56] CenterPoint Petition for Reconsideration, at 4.
[57] CenterPoint Petition, at 22.

reasonable and necessary to be prudent."[58] This argument obscures CenterPoint's burden to prove it acted prudently when utilizing its peak shaving resources during the February Event.

In its October 19 Order, the Company cited the pre-filed testimony of CUB witness Bradley Cebulko and the Department witness Matthew King (along with the testimony and evidence offered by the Company) as evidence it relied on to assess the prudence of the Company's decisions on utilizing peak shaving resources during the February Event.[59] With respect to CenterPoint, the Commission found:

> Under the extraordinary circumstances, it was imprudent for CenterPoint to adhere to its ordinary practice of holding 100% of its peak-shaving facilities in reserve to address unanticipated reliability issues while using none of these resources to help maintain just and reasonable rates. The record demonstrates that fully dispatching the LNG plant on February 17 would have achieved meaningful cost savings for customers while preserving a reasonable level of capacity and flexibility to resolve potential reliability issues that could have arisen during the February Event, with ample resources remaining for the rest of the season.[60]

Any lack of language in the Commission's October 19 Order specifically explaining this finding versus its determination of Xcel's prudence with respect to Xcel's utilization of peaking resources does not inherently suggest the Commission acted arbitrarily, that its October 19 Order was erroneous or ambiguous, or that CenterPoint had met its burden to proof. Though Winter Storm Uri affected both Xcel and CenterPoint in similar ways, the two utilities did not face identical circumstances. As the Department noted in its Reply Brief, the two utilities "serve different communities, have different assets, and are parties to different gas supply contracts."[61] The Commission's analysis of both utilities' actions should have been (and was) conducted based on the totality of the unique circumstances affecting each utility. Disallowance determinations were appropriately made based on that analysis.

D. The Company's Petition should not otherwise persuade the Commission that it should rethink its decision.

In its Petition, the Company notes: "[r]ecovery is not unjust or unreasonable because the costs are significant and the Commission cannot change the rules of service after the fact and disallow costs incurred to provide service simply because those costs were abnormal."[62] First, the Company's costs were not merely significant, they were *historically* significant and *astronomically* high: the Company incurred substantially more costs during the five-day February Event than it incurred *in the entire*

[58] Id.
[59] October 19 Order, at 16-17.
[60] October 19 Order, at 19.
[61] *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions,* Reply Brief of the Minnesota Department of Commerce, Docket No. G008/M-21-138 (March 25, 2022), at 37.
[62] CenterPoint Petition for Reconsideration, at 2.

previous gas year.[63] This historically significant event warranted a comparably significant response by the Company. It bears repeating that the Commission has permitted the Company to recover 91.3% of its Extraordinary Costs, totaling over $373 million, from the Company's ratepayers. To frame the Commission's decision to disallow recovery of 8.7% of the Company's abnormal costs as "chang[ing] the rules of service" simultaneously overstates the impact of the October 19 Order on the Company and belittles the impact of the Company's Extraordinary Cost recovery on its customers—several of whom filed comments in the record showing they are furious, confused, and deeply concerned about paying the surcharges now applied to their gas bills.

The Company further notes: "Minnesota's natural gas utilities, including CenterPoint Energy, are charged with running a system that is safe and reliable, and to effectuate that obligation, cost cannot trump reliability."[64] This is a frustratingly incomplete description of a regulated utility's legal obligations to its customers. Minnesota's natural gas utilities, including CenterPoint Energy, are charged with running a system that is safe and reliable *and with charging customers rates that are just and reasonable.* To effectuate these obligations, the utility must reasonably balance its obligations to provide safe, reliable, *and affordable* service. Those obligations are not mutually exclusive.

Elsewhere in the Company's Petition, the Company recognizes its coinciding responsibility to provide safe, reliable, *and affordable* service. For example, when describing its gas purchasing decisions on February 16th, the Company notes "the record reflects that CenterPoint Energy planned [its gas purchases and modest reserve margin] in such a conservative way intentionally and strategically, to mitigate the impacts of the ongoing price spike to the greatest extent possible, while also ensuring the preservation of reliable service."[65] The Company then complains that the "Commission Order's characterization of CenterPoint Energy as having 'fail[ed] to reevaluate the suitability of its strategies to meet the extraordinary circumstances,' disregards the Company's planning and actions on February 16 when purchasing gas for February 17."[66] On the contrary, the Commission Order "adopt[ed] the Administrative Law Judges' Findings of Fact, Conclusions of Law, and Recommendation to the extent that they are consistent with the Commission's decision as set forth [in the Order]"[67] and contained no disallowances with respect to CenterPoint's gas purchasing for February 17 that conflicted with the ALJ's Report. The ALJs found that CenterPoint's "approach to planning for supply reserve during the February Event was reasonable in light of the circumstances of the event[.]"[68] As a result, the Commission regarded the Company's planning for a reserve margin when purchasing gas for

[63] *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions,* Petition, Docket No. G-008/M-21-138 (March 15, 2021), at 8 (noting in Footnote 5 that "During the 2019-2020 gas year from July 1, 2019 through June 30, 2020, CenterPoint Energy's total annual gas commodity costs were $320,789,461").
[64] CenterPoint Petition for Reconsideration, at 2.
[65] CenterPoint Petition for Reconsideration, at 19.
[66] CenterPoint Petition for Reconsideration, at 19
[67] October 19 Order, at 30.
[68] *In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions,* Findings of Fact, Conclusions of Law, and Recommendation, Docket No. G008/M-21-138 (May 24, 2022) ("ALJ Report"), at 74.

February 17 to be among those prudent actions that now allow CenterPoint to pass 91.3 percent of its Extraordinary Costs through to its customers.

Ultimately, the Commission appropriately balanced the Company's obligations to provide safe, reliable, and affordable service when determining that the Company failed to prove it acted prudently when not taking certain actions that could have reasonably mitigated financial harm to customers without unreasonably risking service disruptions.

IV. CONCLUSION

Minnesota law affords the Commission broad discretion to grant or deny the Company's Petition. The Company has not raised new issues, pointed to new and relevant evidence, exposed errors or ambiguities in the underlying order, or otherwise raised arguments that should persuade the Commission to rethink its prior decision. Therefore, the Petition should be denied.

Sincerely, November 18, 2022

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