

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph Sullivan	Commissioner
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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 A PETITION FOR NORTHERN STATES
POWER COMPANY d/b/a XCEL ENERGY TO RECOVER
FEBRUARY 2021 NATURAL GAS COSTS

MPUC Docket No. G002/CI-21-610

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"); Northern States Power Company d/b/a Xcel Energy ("Xcel" or "the Company"); 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. 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"), the Minnesota Department of Commerce (the

“Department”), and the Minnesota Office of the Attorney General (“OAG”) were party to that contested case.

During the contested case proceeding the Gas Utilities, CUB, the Department, and the OAG collectively filed hundreds of pages of witness testimony, record evidence, and legal briefs outlining their positions.

At a hearing held on August 11, 2022, the Commission determined that CenterPoint, Xcel, and Great Plains had met their burden of proof demonstrating that the vast majority of their Extraordinary Costs were prudently incurred, but that each utility 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”) that permitted Xcel to recover approximately 89.4 percent (\$160 million) of its \$179 million in Extraordinary Costs.

On November 8, 2022, Xcel petitioned for reconsideration of the Commission’s October 19 Order (the “Petition”).¹ As detailed below, the Company’s Petition does not raise any new issues, uncover errors or ambiguities within the Order, or present any new relevant evidence that could—or should—lead the Commission to rethink its prior decision on disallowances. Consequently, the Commission should remain unpersuaded by the Company’s Petition and uphold the effectiveness of the disallowances in its original Order. To the extent the Commission seeks to clarify its Order with respect to methods of cost recovery, it should weigh the relevant record evidence and ensure that any resulting rates are just and reasonable.

II. LEGAL STANDARD

A. Burden of Proof

As articulated by the Commission in its October 19 Order:²

The burden is on the utility to prove its costs were incurred prudently and will result in just and reasonable rates.³ Any doubt as to reasonableness is to be resolved in favor of the consumer.⁴ There is no burden on agencies or other intervenors to precisely identify which imprudent actions caused which costs in order to justify a

¹ *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 a Petition for Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, Docket No. G002/CI-21-610, Xcel Petition for Reconsideration and Clarification, (Nov. 8, 2022) (hereinafter “Xcel Petition for Reconsideration”).

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. G-999/CI-21-135; and *In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, Docket No. G-002/CI-21-610, Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action, at 5 (Oct. 19, 2022) (hereinafter “October 19 Order”).

³ Minn. Stat. § 216B.16, Subd. 4.

⁴ Minn. Stat. § 216B.03.

disallowance.⁵ 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.⁶

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.”⁷ 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*.”⁸ Consequently, the Commission is in its power to reject a Petition for Reconsideration and uphold its original Order.⁹

When Petitions for Reconsideration are filed, the petitioner must “set forth specifically the grounds relied upon or errors claimed.”¹⁰ 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.”¹¹ 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 appear that the original decision, order, or determination is in any respect unlawful or unreasonable.”¹²

III. ANALYSIS

It is indisputable that, as a matter of law, the burden is on the utility to prove the Extraordinary Costs it seeks to recover were incurred prudently and will result in just and reasonable rates.¹³ Any doubt as to reasonableness is to be resolved in favor of the consumer.¹⁴ This is a high burden. In the contested case proceeding that informed the Commission’s Order, the Company offered substantial evidence to try to overcome any doubt that it had acted prudently prior to and during the February

⁵ *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).

⁶ *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987).

⁷ Minn. Stat. § 216B.27, Subd. 1 (emphasis added).

⁸ Minn. Stat. § 645.44, Subds. 15-16.

⁹ 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/IC-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).

¹⁰ Minn. R. 7829.3000, Subp. 2.

¹¹ *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).

¹² Minn. Stat. § 216B.27, Subd. 3.

¹³ Minn. Stat. § 216B.16, Subd. 4.

¹⁴ Minn. Stat. § 216B.03.

Event. Intervenor offered contrary evidence that the Company failed to prudently manage its gas resources and purchasing. Ultimately, the Commission determined that the Company met this burden with respect to \$160 million—or 89.4%—of those costs.

The Company now asks the Commission to reconsider whether the remaining \$19 million of its Extraordinary Costs should be passed onto 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 the Commission “did not properly apply [the prudence standard] to the two disallowances for the Company's natural gas purchases” and miscalculated those disallowances by not relying on the Company's actual costs of gas.¹⁵ Specifically, the Company contests the Commission's load forecasting disallowance of \$4,351,593 and its peaking plant disallowance of \$14,688,960.¹⁶ These contested amounts represent the entirety of the recovery disallowed by the Commission in its Order, but represent only 10.6 percent of the total extraordinary costs of \$179 million incurred by the Company.¹⁷

As further detailed below, the Company's Petition for Reconsideration raises no new issues, does not present additional probative evidence, does not expose errors or ambiguities, and provides no basis upon which the Commission should reconsider its decision. The Company has not met its burden to establish that reconsideration is warranted.

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 The Company raises no new issues that have not been thoroughly addressed in the record and in the Commission's Order.

i. *Load Forecasting Disallowance*

In refuting the Commission's disallowance for load forecasting, the Company argues that the Commission placed unreasonable reliance on the Department's witness, Mr. Matthew King.¹⁹ Xcel had previously criticized intervenor witnesses for the extent of their experience on natural gas purchasing and load forecasting. Their admonishment of the Department's witness is nothing new. However,

¹⁵ Xcel Petition for Reconsideration, at 4.

¹⁶ *Id.* at 4, 15.

¹⁷ October 19 Order, at 45.

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).

¹⁹ Xcel Petition for Reconsideration, at 8.

limiting the pool of potential experts to those that exercise authority over gas load forecasting or similar processes is neither feasible nor proper. Such a high bar leaves room only for utility experts, and disregards Witness King's relevant experience in the regulatory sphere addressing questions of prudence.

As CUB previously stated in its reply brief, complaints about the intervenor witnesses' experience are misplaced, untimely,²⁰ and ultimately do not alleviate the Company of its burden to prove it acted prudently based on the information it knew or reasonably should have known at the time of the February Event.²¹ Despite the Company's reiteration of its experts' qualifications, the Supreme Court has acknowledged that the *ipse dixit* ("[s]omething asserted but not proved")²² of an expert does not automatically give rise to an opinion that must be adopted.²³ The Commission is entitled to weigh the experience and testimony of witnesses and the record and to exercise deference in adopting the recommendations of Witness King.²⁴ We also note that CUB expert witness Bradley Cebulko independently raised concerns similar to those raised by Witness King. Though the details of Witness Cebulko's and Witness King's analyses and recommendations were not identical, the fact that two experts representing different parties both separately questioned the Company's actions and decisions with respect to load forecasting and peaking resources bolsters the strength and credibility of the Witness King's analysis and recommendations. The Commission's reliance on Witness King's testimony to assess prudence and qualify disallowances does not warrant reconsideration.

ii. Disallowance Calculations

The Company challenges the Commission's disallowance determinations because they are based on the average gas price at the Ventura Hub, rather than the daily average spot price across all hubs and purchase methods.²⁵ This issue was previously raised in the record and addressed by the Commission.²⁶ Specifically, the Commission found that it was "reasonable to apply the NNG Ventura price to the disallowance calculation . . . rather than Xcel's daily spot average price," because the

²⁰ As noted in CUB's reply brief, the Administrative Law Judges' First Prehearing Order established that "objections by any party related to the qualifications of a witness or to that witness' direct, rebuttal, or surrebuttal testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judges . . . no later than February 14, 2022." The Company filed no motion to object to witness qualifications. See *In the Matter of the Petitions for Recovery of Certain Gas Costs*, OAH Docket No. 71-2500-37763, Reply Brief of the Citizens Utility Board of Minnesota, at 19 (hereinafter "CUB Reply Brief") (quoting *In the Matter of the Petitions for Recovery of Certain Gas Costs*, OAH Docket No. 71-2500-37763, First Prehearing Order, at 6, Order Point 24 (Sep. 20, 2021)).

²¹ CUB Reply Brief, at 19.

²² *Ipse Dixit*, *Black's Law Dictionary* (11th ed. 2019) (explaining that "court[s] [and Commissions] may reject expert-opinion evidence that is connected to existing data only by the expert's 'ipse dixit'").

²³ *GE v. Joiner*, 522 U.S. 136, 146 (1997).

²⁴ See, e.g., *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 512 (Minn. 2015) (quoting *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 688 (Minn.1984) (noting that the court "attach[es] a presumption of correctness" and "defer[s] to an agency's conclusions in the area of its expertise"); *In re Class A License in re N. Metro Harness, Inc.*, 711 N.W.2d 129, 137 (Minn. Ct. App. 2006) (citing *Info Tel. Commc'ns LLC v. Minn. Pub. Utils. Comm'n*, 592 N.W.2d 880, 884 (Minn. App. 1999) (stating that "[s]ubstantial judicial deference is given to administrative fact-finding").

²⁵ Xcel Petition for Reconsideration, at 12, 17.

²⁶ October 19 Order, at 39.

Company could have—and should have—made use of its geographic diversity of supply.²⁷ While the Company rephrases arguments it previously made on this point by comparing its treatment against that of the other gas utilities,²⁸ this does not alter the Commission's prior consideration of the matter, nor should it change how the Commission calculates any disallowances. As Witness King testified before the Commission:

[I]f Xcel were to have bought . . . less . . . spot gas during the [February] Event . . . they would have [reduced their spot purchases] at the Ventura index. . . . they would not have said, "okay, we'll buy less at Demarc, we'll buy less at Emerson, we won't buy the fixed price purchases." . . . [T]hey would have continued to make all those actions . . . [and] instead they would have gone to the largest hub that they were purchasing at where they had the most exposure and instead reduced their purchases there.²⁹

This testimony—and the record as a whole—recognizes that prudent utilization of the Company's unique geographic diversity would have led to reduced purchases at the Ventura Hub. Because the Commission has already considered and rejected the Company's argument on this issue—and because the Commission's disallowances are based on what actions a reasonably prudent utility would have taken—no reconsideration should be granted.

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

In its Petition for Reconsideration, the Company cites to exhibits, the ALJ report, transcripts from the evidentiary hearing, and prior Commission Orders. All of this evidence cited evidence was part of the record considered by the Commission prior to issuing its October 19 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."³⁰ The Company argues that the Commission's October 19 Order "reflects errors in the application of Minnesota law," contains "fundamental misstatements of the law," and "arbitrarily inflates the calculation of the disallowance for Xcel Energy."³¹ As addressed above, the Commission's decision to calculate disallowances based on Ventura Hub pricing reflects a reasoned decision process that evaluates prudence in light of the

²⁷ *Id.* at 39.

²⁸ Xcel Petition for Reconsideration, at 12.

²⁹ See Minnesota Public Utilities Commission, Recorded Webcast of August 11, 2022 Hearing, at 3:20:38, available at https://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=1768.

³⁰ *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).

³¹ Xcel Petition for Reconsideration, at 4.

utility's geographic diversity. The Company's other arguments related to errors and ambiguities in the October 19 Order are addressed below.

Although we disagree with the Company's assertion that the Commission's decisions related to disallowances contains errors, CUB is cognizant of the Company's desire to clarify the impact of the October 19 Order's adoption of Finding No. 306 included in the Administrative Law Judges' Findings of Fact, Conclusions of Law, and Recommendation (the "ALJ Report").³² Although CUB takes no position on the clarification of this element of the Order, we provide several comments that we believe warrant the Commission's consideration.

i. *Load Forecasting*

In its October 19 Order, the Commission disallowed recovery of approximately \$4.4 million because the Company failed to meet "its burden to prove that its short-term load forecasting and resulting gas costs for February 17 were reasonable."³³ The Company makes several arguments suggesting the Commission's decision has no "record support."³⁴ However, as more fully detailed below, the Commission's Order appropriately addresses—and dispels—the Company's arguments. In consequence, there is no error upon which the Commission should grant reconsideration.

First, the Company mischaracterizes the Commission's Order by arguing that it "ignores the ALJ Findings and the uncontested evidence that the TESLA model incorporates the impact of recent curtailments."³⁵ However, the Commission expressly recognized Xcel's contentions that the "TESLA model effectively adjusts for curtailments by learning from data on historical loads that have been affected by past curtailments."³⁶ Despite this general recognition, the Commission found that Xcel had "failed to provide sufficient details to explain how this process works or how the influence of curtailments in past load data actually manifested in the February-Event load forecast results."³⁷ The fact that the Company provided "nonspecific statements" about the influence of curtailments neither excuses nor meets its burden to prove prudence.

Second, the Company pushes back on the Commission's characterization of the Department's testimony that Xcel "'assume[d]' the model would accurately predict the amount of curtailed load for a particular day."³⁸ But the Commission fully acknowledged that the TESLA model and its gas load forecasts were only "one input among many"³⁹ when it held that the Company met its burden to show that its load forecasting and reserve margin planning for February 14 were "within a range of

³² *Id.* at 18.

³³ October 19 Order, at 20.

³⁴ Xcel Petition for Reconsideration, at 9.

³⁵ *Id.*

³⁶ October 19 Order, at 13.

³⁷ *Id.* at 19.

³⁸ Xcel Petition for Reconsideration, at 9.

³⁹ *Id.* (citing Xcel Ex. 205 at 16 (Derryberry Rebuttal)).

reasonable conduct under the circumstances and did not result in unreasonable gas costs for February 13-16.”⁴⁰ Specifically, the Commission noted that *even if* the TESLA model included curtailed load, the Company’s “gas supply planning for February 14 entailed prudent *consideration of multiple other relevant factors in conjunction with the load forecast.*”⁴¹ The Commission also recognized that the Company’s February 17 decisions were influenced by various factors in addition to its TESLA modeling, including market volatility, forecasted weather patterns, and that spot purchases would only need to be made for a single day.⁴² Altogether, the Commission determined the Company acted imprudently after appropriately weighing the evidence before it and considering the same evidence that the Company erroneously claims the Commission has not considered. As a result, no errors or ambiguities exist within the Order that would warrant reconsideration.

Third, the Company argues that the Commission cannot use the hypothetical load forecast developed by Mr. King for February 17 as a basis for determining disallowances.⁴³ The Company’s emphasis on words such as “*recreating*” and “*should have purchased*” in Mr. King’s testimony appear to suggest Mr. King’s application of the prudence test improperly “use[es] the benefit of hindsight.”⁴⁴ However, disallowances are inherently backward looking. While the prudence analysis involves determining whether “reasonable action [was] taken in good faith based on knowledge available at the time of the action or decision,”⁴⁵ determining disallowances necessarily entails determining the costs of imprudent actions by comparing them with a hypothetical prudent alternative. As recognized above, the Commission found the Company failed to meet its burden to show prudence with respect to load forecasting and gas purchasing for February 17. Because the Commission has discretion to determine reasonable disallowances when utilities refuse or fail to provide the “transparency necessary to quantify the prudence of final costs,”⁴⁶ its reliance on Mr. King’s hypothetical load forecast is not an error that warrants reconsideration.

Fourth, the Company suggests the Commission failed to “recognize the serious supply concerns” faced by utilities on February 16.⁴⁷ However, the Commission recognized the impact of freeze-offs on natural gas supplies and the other reliability issues related to the February Event. Notably, the Commission highlighted how “warming trends were expected . . . beginning on February 17, *ameliorating prior reliability concerns relating to possible supply disruptions.*”⁴⁸ While the Company emphasized its “ongoing concerns regarding the potential of supply cuts”⁴⁹ during the February 16 planning period, the Commission found that such concerns could not be considered in a vacuum. By

⁴⁰ October 19 Order, at 19.

⁴¹ *Id.* at 20.

⁴² *Id.*

⁴³ Xcel Petition for Reconsideration, at 10.

⁴⁴ *Id.*; October 19 Order, at 5.

⁴⁵ October 19 Order, at 5.

⁴⁶ *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*, 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).

⁴⁷ Xcel Petition for Reconsideration, at 10.

⁴⁸ October 19 Order, at 21

⁴⁹ Xcel Petition for Reconsideration, at 10-11.

law, the Company is required not only to provide safe and adequate utility service,⁵⁰ but also to charge rates that are just and reasonable.⁵¹ Consequently, the utility was required to evaluate its gas supply planning based on the totality of the circumstances and “consider the possibility of mitigating customer financial impacts.”⁵² The Commission ultimately reached the conclusion that Xcel failed to “demonstrate[] that the reliability risks it could have reasonably anticipated . . . were sufficient to justify the reserve margin it used when purchasing spot gas for February 17.”⁵³ Because Xcel was well-acquainted with the extreme pricing environment when it made its gas planning decisions for February 17, the Commission held the Company’s failure to “meaningfully consider” cost risks was imprudent.⁵⁴ Contrary to the Company’s assertions, the Commission carefully weighed the risks of supply disruptions against the threat of elevated costs. Considering the substantial impact that costs would have on customers is not an error that warrants reconsideration; it is an essential part of utility service that the Company should have analyzed in the first instance.

Lastly, the Company claims that the Commission “entirely omits any analysis of what reasonable utilities would do in similar circumstances.”⁵⁵ This incorrectly frames the scope of the Commission’s October 19 Order, as the entirety of Commission’s analysis is devoted to evaluating whether the Company “exercise[d] the care that a reasonable [utility] would [have] exercise[d] under the same circumstances at the time the decision was made.”⁵⁶ That other reasonable actors would not have acted in the same way as the Company is inherent in the Commission’s finding of imprudence.

ii. Peaking Resources

The Company contests the Commission’s finding that the “Company did not meet its burden to prove it acted prudently with respect to its peaking plants on February 17, 2021” and that \$14.7 million in cost recovery should be disallowed.⁵⁷ The Company mischaracterizes the Commission’s determination by insinuating that it failed to address “whether a similarly-situated reasonable utility would have planned to use its plants in lieu of purchasing gas.”⁵⁸ But the Commission answered that question in the affirmative, finding that the record evidence was “persuasive in establishing that a prudent utility under the circumstances with access to the same information and resources as Xcel *would have planned to dispatch some peak-shaving resources* on February 17.”⁵⁹ The Company argues that the record does not support this conclusion, but Witness King noted that peaking resources *were* used in the past by the Company in “less-than-Design-Day weather.”⁶⁰ Despite the ALJ’s rejection of

⁵⁰ Minn. Stat. § 216B.04.

⁵¹ Minn. Stat. § 216B.03.

⁵² October 19 Order, at 21.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Xcel Petition for Reconsideration, at 11.

⁵⁶ October 19 Order, at 5.

⁵⁷ Xcel Petition for Reconsideration, at 15.

⁵⁸ *Id.* (emphasis omitted).

⁵⁹ October 19 Order, at 38 (emphasis added).

⁶⁰ DOC Ex. 508 at 44 (King Surrebuttal).

the similarities between the 2017-2018 New Year Event and the February Event, the Commission was entitled to make its own determination on that issue.

Speculative reasons were provided by Company Witness Derryberry for why peaking resources were utilized during the 2017-2018 New Year Event, including the impact of freeze-offs in the Bakken production area on Ventura Hub supply.⁶¹ Specifically, Mr. Derryberry identified that the “price spike to \$67 per MMBtu at Ventura was ample indication that Ventura supply was scarce.”⁶² Despite Witness Derryberry’s claim that February Event freeze-offs primarily impacted the Demarc Hub,⁶³ natural gas prices at Ventura “sett[ed] at . . . \$188.32” on February 16.⁶⁴ Based on his own calculations, this price spike should have warranted evaluating whether the use of peaking resources was appropriate, especially given how the Company had “serious supply concerns” and “faced the potential of supply cuts . . . on February 16.”⁶⁵

Based on the entirety of the record evidence, the Commission acknowledged that, although the decision not to use peaking resources on February 12 fell within the range of reasonable and prudent conduct,⁶⁶ the conditions surrounding gas purchasing and peaking utilization had shifted by February 16. As the Commission noted, the “circumstances demanding extraordinary action were known and unequivocal” by February 16, and Xcel’s “failure to reevaluate the suitability of its strategies to meet the extraordinary circumstances” fell short of the “minimum threshold of prudent conduct.”⁶⁷ Thus, contrary to the Company’s assertions, the Commission did not determine that the “only reasonable action . . . would have been to reduce its daily spot purchase volume . . . based on a plan to dispatch” peaking facilities.⁶⁸ Rather, the Commission determined that Xcel’s failure to *evaluate* alternative possibilities would have fallen below the prudence requirement had its peaking facilities been available. As a result, there are no errors in the Commission’s reasoning that warrant reconsideration.

iii. Request for Clarification

Order Point 1 in the Commission’s October 19 Order adopted “the Administrative Law Judges’ Findings of Fact, Conclusions of Law, and Recommendation to the extent they are consistent with this Commission’s decision.”⁶⁹ In recognition of this language, the Company notes that it “believe[s] that the Commission’s Order adopts Finding No. 306” of the Administrative Law Judges’ Recommendation, but that clarification is warranted because of the potential impact on surcharges and rates charged to

⁶¹ Xcel Ex. 205 at 40-41 (Derryberry Rebuttal).

⁶² *Id.* at 41.

⁶³ *Id.*

⁶⁴ CUB Ex. 801 at 7 (Cebulko Direct).

⁶⁵ Xcel Petition for Reconsideration, at 10.

⁶⁶ October 19 Order, at 37.

⁶⁷ *Id.*

⁶⁸ Xcel Petition for Reconsideration, at 17.

⁶⁹ *Id.* at 19 (quoting October 19 Order, at 45).

customers.⁷⁰ Finding No. 306 addresses the modes of cost recovery applicable—or inapplicable—to certain classes of customers, as set forth below:

It is not reasonable to assign costs to most customers based on consumption during the February Event. However, Xcel should assign amounts to interruptible customers who used gas service during the February Event, and should track customers who switch to transportation service to recover the appropriate costs during the recovery period.⁷¹

This issue is of significant interest, as it may either alleviate the burden to pay surcharges for interruptible customers that fully curtailed or require the application of an “exit charge” for customers that subsequently switched to transportation service.⁷² To the extent that the Commission finds its Order to be ambiguous on this issue, CUB encourages it to weigh whether the application of Finding No. 306 is in the public interest and will result in just and reasonable rates.

CUB acknowledges and appreciates the reasoning behind requiring an exit charge for customers who “move to transportation service in an attempt to avoid paying the February Event surcharge.”⁷³ Unlike residential customers and other classes of ratepayers that cannot change their rate class, commercial and industrial customers “have the option to move from natural gas sales service to transportation service . . . [and avoid paying] the Company’s PGA rates or PGA true-up.”⁷⁴ Allowing such customers to transfer rate classes to avoid paying the February Event surcharge will result in a “larger remaining balance for other customers.”⁷⁵ Allowing such transition without requiring payment an “exit charge” forces other rate classes to pay for the benefits received by another class, and may rise to the level of being “unreasonably preferential” to commercial and industrial customers and “unreasonably prejudicial” to other rate classes.⁷⁶

The Company has also proposed “exempt[ing] from the surcharge interruptible customers who *fully* curtailed during the February curtailment events.”⁷⁷ The surcharges already paid by these customers would be refunded.⁷⁸ On one hand, we understand that exempting interruptible customers that actually curtailed during the February Event may help preserve the motivation for interruptible customers to curtail again when called upon during future events. On the other hand, interruptible customers already benefit from paying reduced rates in exchange for curtailing usage when called to

⁷⁰ *Id.*

⁷¹ *In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, MPUC Docket No. G-002/CI-21-610, OAH Docket No. 71-2500-37763, Office of Administrative Hearings, Findings of Fact, Conclusions of Law, and Recommendation, at 60 (May 24, 2022) (hereinafter “ALJ Recommendation”).

⁷² *See, e.g.*, Xcel Petition for Reconsideration, at 18.

⁷³ ALJ Recommendation, at 60.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Minn. Stat. § 216B.03.

⁷⁷ Xcel Petition for Reconsideration, at 18.

⁷⁸ *Id.*

do so pursuant to applicable tariffs. The Commission should consider whether rewarding those customers for actions they are already compensated for taking is appropriate.

Also, exempting interruptible customers that curtailed during the February Event from paying surcharges is a benefit that does not apply to other rate classes. As noted throughout the record, the Company “does not have a complete billing quality data set for all individual customer usage” for non-interruptible customers during the February Event.⁷⁹ As a result, the surcharge currently applied to customers’ bills is reflective of *current* usage, as opposed to natural gas usage during the February Event. This has led to situations where customers are forced to pay higher surcharges even though they limited gas usage during February 2021. Even more frustrating, persons who were not customers of Xcel during February 2021 have subsequently been required to pay for the Company’s Extraordinary Costs upon moving into the Company’s service territory.

To the extent the Commission wishes to clarify whether its Order adopts Finding No. 306, it should weigh the above-mentioned factors in reaching a decision.

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

The Company states in its Petition that while it “understands the public sentiment . . . that utilities should bear a portion” of the February Event Extraordinary Costs, “neither Minnesota law nor the record” support the disallowances set forth in the Commission’s October 19 Order.⁸⁰ However, as illustrated both in the October 19 Order and this Answer, the decision to disallow 10.6 percent of the Company’s Extraordinary Costs of \$179 million was proper. In developing its disallowances, the Commission carefully weighed the Company’s actions against the prudence standard and considered the overarching requirement that utilities provide “safe, adequate, efficient, and reasonable service”⁸¹ at “just and reasonable rates.”⁸² The mere fact that the Company “achieved [the] objective” of providing safe and reliable service throughout the February Event does not “obviate the requirement that all rates charged . . . must be just and reasonable.”⁸³ Because the Company failed to meet its burden to “prove its costs were incurred prudently and [would] result in just and reasonable rates,”⁸⁴ there is no reason for the Commission to reconsider its prior Order.

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

⁷⁹ ALJ Recommendation, at 59.

⁸⁰ Xcel Petition for Reconsideration, at 2-3.

⁸¹ Minn. Stat. § 216B.04.

⁸² Minn. Stat. § 216B.03.

⁸³ October 19 Order, at 38.

⁸⁴ *Id.* at 5.

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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