MINNESOTA DEPARTMENT OF COMMERCE

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January 6, 2017 **PUBLIC DOCUMENT**

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

RE: **PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. PL6580/M-16-1026

Dear Mr. Wolf:

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

> A *Petition* by Greater Minnesota Transmission, LLC (GMT) for Approval by the Minnesota Public Utilities Commission (Commission) of a Firm Gas Transportation Agreement (Agreement) with United Natural Gas, L.L.C. (UNG), a subsidiary of United Farmers Cooperative (UFC).

The filing was submitted on December 7, 2016. The petitioner is:

> Kristine A. Anderson, Esq.
> Corporate Attorney
> Greater Minnesota Transmission, Inc.
> 202 South Main Street
> P.O. Box 68
> Le Sueur, Minnesota 56058

The Department recommends that the Commission approve the Agreement as filed. The Department is available to answer any questions that the Commission may have.

Sincerely,

/s/ LAURA OTIS
Rates Analyst
651-539-1828

LO/ja
Attachment

MINNESOTA DEPARTMENT OF COMMERCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

PUBLIC COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE DIVISION OF ENERGY RESOURCES

DOCKET NO. PL6580/M-16-1026

I. BACKGROUND

On December 7, 2016, Greater Minnesota Transmission, LLC (GMT or the Company) filed a *Petition* for a Firm Gas Transportation Agreement (Agreement) with United Natural Gas, L.L.C. (UNG), a subsidiary of United Farmers Cooperative (UFC or the Co-op) with the Minnesota Public Utilities Commission (Commission). The Agreement encompasses, and sets forth, the terms and conditions of service, including rate design and rates, between GMT and the Co-op to provide natural gas service to UNG in the Morton, Minnesota area, where UNG intends to build distribution facilities to serve the Lower Sioux Indian Community and other customers that lie on that line (Project). The planned Project governed by the Agreement involves the construction of approximately 35 miles of new transmission line from a Town Border Station (TBS) near Lafayette, Minnesota to an interconnection with UNG's system at the Lower Sioux Community Jackpot Junction Casino.

Under the terms of the Agreement, UNG would purchase its own natural gas and arrange delivery to GMT's proposed Lafayette TBS. From the Lafayette TBS, GMT would transport the gas to the agreed-upon interconnections with the UNG's facilities for re-delivery. The Agreement allows for the transport of up to **[TRADE SECRET DATA HAS BEEN EXCISED]** Dekatherms (Dth) per day at a minimum operating pressure of 50 pounds per square inch (psi) over a **[TRADE SECRET DATA HAS BEEN EXCISED]** term.

The Agreement contains a standard rate structure for an intrastate pipeline. The rate negotiated by GMT and the Co-op involves a monthly demand charge of **[TRADE SECRET DATA HAS BEEN EXCISED]** and a volumetric charge of **[TRADE SECRET DATA HAS BEEN EXCISED]**.

UNG and GMT partnered on a similar agreement to bring natural gas service to the Lafayette and Courtland areas in Docket No. PL-6580/M-15-1041. The Commission approved the agreement, incorporating the recommendations of the Minnesota Department of Commerce, in its March 1, 2016 Order. The terms of the proposed contract are also substantially similar to those in several other approved contracts for natural gas transport.[1]

The Minnesota Department of Commerce, Division of Energy Resources (Department) provides its analysis of the *Petition* below.

II. DEPARTMENT ANALYSIS

The Department's analysis is divided into the following sections: 1) the statutory requirements of an intrastate natural gas pipeline; and 2) cost recovery associated with the Agreement.

A. REQUIREMENTS OF MINNESOTA STATUTES AND RULES

Minn. Stat. §216B.045, subd. 1 states:

> For the purposes of this section "intrastate pipeline" means a pipeline wholly within the state of Minnesota which transports or delivers natural gas received from another person at a point inside or at the border of the state, which is delivered at a point within the state to another, provided that all the natural gas is consumed within the state. An intrastate pipeline does not include a pipeline owned or operated by a public utility, unless a public utility files a petition requesting that a pipeline or a portion of a pipeline be classified as an intrastate pipeline and the commission approves the petition.

As an intrastate pipeline, GMT must comply with the provisions of Minn. Stat. §216B.045. The Department notes that GMT is not a public utility since it does not furnish retail natural gas service.[2] As such, the Company is not subject to the same Minnesota Rules as regulated distribution companies such as Xcel Energy or CenterPoint Energy. The Commission has not promulgated rules applicable to intrastate pipelines under Minnesota Statute § 216B.045; as such, there appear to be no Minnesota Rules that specifically apply to GMT's provision of intrastate wholesale transportation service.

[1] Docket Nos. PL6580/M-15-968, PL6580/M-15-967, PL6580/M-14-1056, PL6580/M-06-1063, PL6580/M-13-266, PL6580/M-14-386, and PL6580/M-14-578.
[2] The Department notes that the Community Co-ops of Lake Park were granted a request for exemption from Commission regulation (subject to the utility making required compliance filings and its continued submission of Annual Cold Weather Rule filings) in its December 22, 2015 Order in Docket No. G-6956/M-15-856.

Minnesota Statute §216B.045 requires that an intrastate pipeline provide service under the following three conditions:

- Contract at rates that are just and reasonable and do not unreasonably discriminate among customers receiving like or contemporaneous services (Minnesota Statute §216B.045, subd. 2);
- Offer services by contact on an open access, nondiscriminatory basis (Minnesota Statute §216B.045, subd. 3); and
- Obtain Commission approval for each contract to be effective (Minnesota Statute §216B.045, subd. 4).

The Department separately discusses these statutory requirements below.

1. Contract at Reasonable Rates

The Agreement contains standard language and rate design and is, as noted above, substantially similar to the contracts approved in several other recent dockets. As noted in the filing, Minnesota Statute §216B.03 states:

> Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in the application to a class of customers.

The Department notes that, under most circumstances, a reasonable rate could be defined as being a rate based on a utility's cost of service. This reasonableness check is generally associated with the review of retail rate regulated utilities. In certain instances, however, a reasonable rate may be a rate that is negotiated as part of an arm's length transaction. GMT incorporated this latter argument in its filing. In simple terms, one could find the rate in this filing reasonable because all parties involved, through the negotiating process, have agreed to the set rate. The Department is generally agreeable to the Company's reasoning in this *Petition*, because the proposed cost-recovery mechanism is for the pipeline-related costs associated with this Project, a situation similar to other intrastate pipeline projects previously proposed by the Company and its affiliate.[3]

Despite the negotiated rate, it is necessary to review the various assumptions made by GMT to determine whether or not they are reasonable. Although this Project is not fully analogous to a retail utility project, the Department believes it is important that the rate is reviewed to ensure that it is crafted in a way that provides reasonable benefit to UNG while still allowing

[3] Docket Nos. PL6580/M-06-1063; PL6580/M-13-91; PL6580/M-13-94; PL6580/M-14-386; G022/M-14-342; and PL6580/M-14-1056.

GMT an opportunity to earn an acceptable return. These issues are discussed in greater detail in Section B below.

2. Obligation to Offer Service

As previously noted, GMT is required to offer services by contract on an open access, non-discriminatory basis. GMT stated in the *Petition* that since it would willingly enter into negotiations with other similarly situated private entities to discuss similar cooperative agreements that would serve the public interest in other respective communities, there is no discriminatory element to the Agreement and GMT has complied with its statutory obligation to offer its terms on an open-access basis. In addition, the terms and conditions contained in the Agreement are substantially similar to those approved by the Commission in previous GMT and affiliate filings.[1] Consequently, the Department concludes that the Company offers service on an open access, non-discriminatory basis.

Based on its analysis, the Department concludes that GMT is offering its services by contract on an open-access, non-discriminatory basis which appears unlikely to unreasonably discriminate among customers receiving like services.

3. Approval of the Agreement

Both GMT and the Co-op signed the Agreement on December 6, 2016. The Company formally submitted the Agreement to the Commission for approval on December 7, 2016. Subject to regulatory approval,[4] GMT will begin providing service beginning the later of (i) September 1, 2017 or (ii) the date when the Company has completed the construction of all necessary facilities to effectuate the transportation of gas. Since the Agreement is subject to Commission approval, the Department concludes that the proposed effective date is not inconsistent with Minnesota Statutes.

B. FINANCIAL ANALYSIS

The Department's primary criterion for review in a filing of this type is that the project is financially viable from GMT's perspective. Since GMT owns, and operates, several other intrastate pipeline projects, it is necessary to verify whether construction of the Project may have a negative impact on the Company's overall financial health and, potentially, the operation of other pipelines.

While the rates the Co-op has agreed to as part of the Agreement are also a concern for the Department, the fact that Minn. Statute §216B.045, subd. 5 allows for a complaint process before the Commission lessens the Department's rate-related concerns over the long-term.

[4] See Section 7.0 of the Agreement.

The Department reviewed the assumptions, and calculations used by the Company in its financial analysis of the Project. If the Project is constructed and operates in accordance with the assumptions in the model, GMT will earn an average of **[TRADE SECRET DATA HAS BEEN EXCISED]** percent return on equity over the term of the Agreement.

Over the past couple of years, the Department has developed an analysis that evaluated multiple contingencies relative to a project's cash-flows for GMT's proposed intra-state pipelines. While that approach is fundamentally correct in that it focuses on the Project's cash-flows, the Department's analysis has included a contingency that, if it were to be realized, would potentially result in GMT no longer being in compliance with the loan agreement that financed the Project. Given the information included in its financial analysis, the Department inferred that GMT's loan agreement requires GMT to maintain a Fixed Charge Coverage Ratio of at least **[TRADE SECRET DATA HAS BEEN EXCISED]** for the Project.[5] By extension, the Department's analysis also assumed that the Company would be able to satisfactorily amend or renegotiate that loan agreement if one of those contingencies identified actually occurred.

To provide a more financially conservative analysis for the Commission's review, the Department included an additional decision criterion in its analysis in this docket. We considered the three contingencies that are usually included in this type of analysis (lower volumetric revenue, higher capital costs and a combination of lower volumetric revenue and higher capital costs) while simultaneously requiring that GMT's Fixed Charge Coverage Ratio remain at or above **[TRADE SECRET DATA HAS BEEN EXCISED].**

Scenario 1 attempted to quantify the risk GMT assumed under the Agreement related to changes in throughput by estimating the maximum amount of decrease in the forecasted volumetric revenue that GMT could experience and still remain in compliance with the Fixed Charge Coverage Ratio requirement.

GMT's Base Case assumes **[TRADE SECRET DATA HAS BEEN EXCISED]** in annual volumetric revenue which results in a **[TRADE SECRET DATA HAS BEEN EXCISED]** percent annual load utilization factor. The Department calculated **[TRADE SECRET DATA HAS BEEN EXCISED]** as the annual volumetric revenue GMT would need to recover in order to remain in compliance with the minimum required Fixed Charge Coverage Ratio in its loan covenant, if no other changes occurred. This corresponds to an approximate **[TRADE SECRET DATA HAS BEEN EXCISED]** percent decrease in average monthly volumes.[6] Table 1 summarizes this information.

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[5] The Fixed Charge Coverage Ratio is defined in GMT's financial model as the annual Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) divided by the annual loan payment. In GMT's case, the fixed Charge Coverage Ratio can be affected by a variance from forecasted revenues and/or operating expenses or both.

[6] This Fixed Charge Coverage Ratio has been consistent in GMT's financial models included in Docket Nos. PL6580/M-14-1056; PL6580/M-15-967; PL6580/M-15-968; PL6580/M-15-1041; and PL6580/M-16-936.

Table 1 – Comparison of Forecasted Annual Volumetric Revenue Estimated in the Base Case and Scenario 1, the Fixed Charge Ratio and the Annual Load Utilization Factor

Description	Base Case	Scenario 1	Variance	Percentage Change
	[TRADE SECRET DATA HAS BEEN EXCISED]			
Volumetric Revenue ($/yr)				
Fixed Charge Coverage Ratio				
Annual Load Utilization Factor				

The information contained in Table 1 suggests that GMT could withstand a significant decrease in throughput-related revenue and still remain in compliance with its loan agreement, ceteris paribus.

Scenario 2 examined the risk of higher capital costs on GMT's ability to remain in compliance with the Fixed Charge Coverage Ratio requirement. GMT's Base Case assumes **[TRADE SECRET DATA HAS BEEN EXCISED]** in capital costs and a contingency of **[TRADE SECRET DATA HAS BEEN EXCISED]**[7] for a total investment plus contingency of **[TRADE SECRET DATA HAS BEEN EXCISED]**. It also assumes a **[TRADE SECRET DATA HAS BEEN EXCISED]** debt-to-equity ratio that results in **[TRADE SECRET DATA HAS BEEN EXCISED]** of equity and **[TRADE SECRET DATA HAS BEEN EXCISED]** in debt. The Department estimates that GMT's current capital cost estimate (excluding the **[TRADE SECRET DATA HAS BEEN EXCISED]** contingency) could increase by **[TRADE SECRET DATA HAS BEEN EXCISED]** percent and the Company would still remain in compliance with its loan covenant assuming no other changes occurred. This information is summarized in Table 2.

[7] The Department notes that GMT used a lower contingency percentage in its cost estimates than it has in other recent firm gas transportation agreement filings.

Table 2 – Comparison of Forecasted Capital Costs in the Base Case and Scenario 2, the Fixed Charge Ratio and the Annual Load Utilization Factor

Description	Base Case	Scenario 2	Variance	Percentage Change
	[TRADE SECRET DATA HAS BEEN EXCISED]			
Capital Costs				
Fixed Charge Coverage Ratio				
Annual Load Utilization Factor				

A **[TRADE SECRET DATA HAS BEEN EXCISED]** percent increase in the Project's capital costs would represent a significant increase in capital costs for a project of this type.[8] Therefore, it appears that an increase in capital costs, even at levels much higher than the contingency built into the model, would not cause GMT to be in violation of the loan agreement. The Department also notes that an increase in capital costs does not have an effect on the annual load utilization factor in this scenario since neither the total amount of gas that can be delivered during the year nor the annual amount of gas forecasted to be delivered changed in the analysis as a result of the increase in the capital costs.

A third contingency (Scenario 3) considered combined the effects of higher-than-forecasted capital costs and lower-than-forecasted volumetric revenues. The Department examined the effects of changes in both of these factors around a **[TRADE SECRET DATA HAS BEEN EXCISED]** percent benchmark (capital cost increase or volumetric revenue decrease) for this scenario. The result indicated that GMT should be able to meet its commitments even if capital costs increased by **[TRADE SECRET DATA HAS BEEN EXCISED]** percent and volumetric revenue decreased by **[TRADE SECRET DATA HAS BEEN EXCISED]** percent. The latter change also lowered the annual load utilization factor from **[TRADE SECRET DATA HAS BEEN EXCISED]** percent to **[TRADE SECRET DATA HAS BEEN EXCISED]** percent. Table 3 summarizes this information.

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[8] This analysis assumes that GMT's annual loan payment would not increase (i.e., GMT would fund the cost over-run in excess of the Company's **[TRADE SECRET DATA HAS BEEN EXCISED]** contingency with equity).

Table 3 – Comparison of Changes in Volumetric Revenue and Capital Costs in the Base Case and Scenario 3, the Fixed Charge Ratio and the Annual Load Utilization Factor

<table>
<tr><th>Description</th><th>Base Case</th><th>Scenario 3</th><th>Variance</th><th>Percentage Change</th></tr>
<tr><td></td><td colspan="4" rowspan="7">[TRADE SECRET DATA HAS BEEN EXCISED]</td></tr>
<tr><td>Volumetric Revenue ($/yr)</td></tr>
<tr><td>Capital Costs</td></tr>
<tr><td>Fixed Charge Coverage Ratio</td></tr>
<tr><td>Annual Load Utilization Factor</td></tr>
<tr><td></td></tr>
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Given that the Project can withstand a combination of an increase of [TRADE SECRET DATA HAS BEEN EXCISED] percent in its capital costs and a decrease of [TRADE SECRET DATA HAS BEEN EXCISED] percent in its annual volumetric revenue before violating its loan agreement, the project appears to be reasonable

Table 4 is intended to provide a context for the annual load utilization factor estimates included in Tables 1 through 3. Table 4 shows the projected annual load utilization factors for six earlier GMT pipeline-related dockets (14-1056, 15-967, 15-968, 15-1041, and 16-936).[9]

Table 4 – Comparison of Assumed Annual Load Utilization Factors in Recent GMT Dockets

<table>
<tr><th>Docket No.</th><th>Annual Load Utilization Factor</th></tr>
<tr><td></td><td rowspan="8">[TRADE SECRET DATA HAS BEEN EXCISED]</td></tr>
<tr><td>14-1056</td></tr>
<tr><td>15-967</td></tr>
<tr><td>15-968</td></tr>
<tr><td>15-1041</td></tr>
<tr><td>16-936</td></tr>
<tr><td>16-1026</td></tr>
<tr><td></td></tr>
</table>

[9] The Commission required GMT "to file an annual letter stating the Co-op's annual load utilization factor separately for each pipeline" in its Order dated May 26, 2015 in Docket No. PL6580/M-14-1056. GMT filed that information for the September through December 2015 time period on January 6, 2016.

The annual load utilization factor included in the instant docket (16-1026) is just below the range from the prior five dockets listed. From the Department's experience, the annual load utilization factors listed in Table 4 do not appear to be unreasonable.

The Department concludes that if the Project is developed as planned, GMT's ability to serve other customers and projects are unlikely to be negatively impacted. As such, the Department recommends that the Commission approve the Agreement.

C. UTILITY STATUS OF UNG

The Commission has addressed the issue of UNG's utility status in its May 24, 2016 Order in Docket No. G-6960/M-16-214. In that Order, the Commission approved UNG's request for a small gas utility franchise exemption for service provided in the municipalities of Lafayette and Courtland and incidental service to rural areas outside the borders of the municipalities.

However, in Order point four, the Commission clarifies that

> *approval is limited to this docket and that any future decisions involving interpretation of the term incidental service in Minn. Stat. § 216B.16, subd. 12(b) will be made on a case by case basis.*

Therefore, it is unclear whether this exemption should be extended to the instant Project as well. The Department is unaware of any official petition to extend the exemption to cover the area in the instant docket.

The Applicant, or UNG, should address this issue in Reply Comments.

III. RECOMMENDATIONS

Based on its review, the Department recommends that the Commission approve the Agreement as filed.

The Department also recommends that GMT include the Project in the annual load utilization factor report required in prior dockets (e.g., PL6580/M-967, PL6580/M-968, and PL6580/M-15-1041).

GMT or UNG should file a reply addressing UNG's utility status in the area to be served by this project.

/ja

CERTIFICATE OF SERVICE

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

Minnesota Department of Commerce
Public Comments

Docket No. PL6580/M-16-1026

Dated this 6th day of January 2017

/s/Sharon Ferguson

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