

April 7, 2017

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

RE: **Minnesota Department of Commerce, Division of Energy Resources Request for Comments**  
Docket Nos. PL6580/M-16-1026 (GMT agreement to serve UNG) and G6960/M-16-214 (UNG agreement to serve the Lower Sioux)

Dear Mr. Wolf:

The Minnesota Department of Commerce, Division of Energy Resources (Department or DOC) recommends that the Minnesota Public Utilities Commission (Commission) issue a Request for Comments regarding the February 7, 2017 Supplemental Document, filed by United Natural Gas LLC (UNG or United) in Docket No. G6960/M-16-214. UNG requested an exemption from Commission regulation to provide natural gas service to the Lower Sioux Indian Community (Lower Sioux or Tribe) in that Supplemental filing. The Department notes that Docket No. G6960/M-16-1026 is also affected by this request from comments. In that proceeding, Greater Minnesota Transmission (GMT) is requesting approval of an agreement to provide interstate transmission service to United's proposed facilities that would serve the Lower Sioux.

The Department is concerned that UNG has not provided any legal, financial or operational support for its request for the exemption from Commission regulation. Thus, to ensure that the Commission has sufficient information to decide on United's proposal, the Department recommends that the Commission issue a request for comments from interested parties, including the Tribe. In the interim, the Department is consulting with the Lower Sioux to provide background as well as hear directly from the Tribe with respect to the issues presented.

The Department is available to answer any questions that the Commission may have.

Sincerely,

/s/ JOHN KUNDERT  
Financial Analyst

JK/lt  
Attachment

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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

**DOCKET NOS. PL6580/M-16-1026 & G6960/M-16-214**

**I. INTRODUCTION**

On February 7, 2017, United Natural Gas LLC (UNG or United) filed a “Supplemental Document” in Docket No. G6960/M-16-214. United effectively requested approval from the Minnesota Public Utilities Commission (Commission) of an exemption from Commission regulation to serve the Lower Sioux Indian Community (Lower Sioux or Tribe). The filing used an exemption from regulation the Commission previously granted UNG to serve the municipalities of Lafayette and Courtland (the Municipalities) as its basis.

In that supplemental filing, United notified the Commission that it had concluded an agreement with the Lower Sioux to provide natural gas service to that community. UNG also provided an updated Final Rates/Service & Regulations Book and a map that identified the facilities that UNG anticipated installing in order to serve the Tribe. In support of its request, United explained in the filing that it will not be serving more than 2,000 customers, even including the additional customers located within the Lower Sioux community.

UNG’s request for exemption from regulation for natural gas service to the Tribe is premised on approval of Greater Minnesota Transmission, LLC (GMT’s) request for approval of a firm gas transportation agreement with UNG, which was filed on December 7, 2016, in Docket No. PL6580/M-16-1026.

**II. BACKGROUND**

On March 8, 2016, in Docket No. G6960/M-16-214 United requested an exemption from Commission regulation for natural gas service provided within the Municipalities and for incidental service outside the borders of the Municipalities. On May 24, 2016 the Commission granted United’s request for the exemption from the requirements of Minn.

Stat. § 216B.16, subd. 12 for service provided within the borders of the Municipalities and for incidental service. (2016 Order).

The Commission's approval of UNG's request for exemption from Commission oversight for rate regulation was quite specific. The Order stated in part:

The above entitled matter has been considered by the Commission and the following disposition made:

1. Approved UNG's request for an exemption from the requirements of Minn. Stat. § 216B.16, subd. 12 for service provided within the borders of the municipalities listed in the petition, and for incidental service outside the borders of the municipalities it serves, as listed in the petition.
2. Clarified that UNG is subject to statutory reporting requirements, including:
  - a. annual Cold Weather Rule, in Minn. Stat. § 216B.096, subd. 11 and Minn. Stat. § 216B.16, subd. 12(c);
  - b. notice to cities of utility disconnection, in Minn. Stat. § 216B.0976;
  - c. residential customer protections, in Minn. Stat. § 216B.098;
  - d. annual tariff updates with municipally-approved rates, in Minn. Stat. § 216B.16, subd. 12(c);
  - e. any subsequent changes in rates, tariffs, and contracts for service outside the municipalities at least 30 days in advance of implementation; and
  - f. notification to the Commission should its customer base expand beyond the 2,000 customer threshold.
3. Required UNG to submit its revised tariff book with the Department's and PUC staff's changes in a compliance filing, plus more detailed maps for areas between Courtland and Lafayette with details down to the street level, within 10 days of the order.
4. Clarified that the Commission's 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.
5. Accepted UNG's agreement to provide a compliance filing regarding the quantity and quality of service to UNG customers outside of the municipalities after one year of providing service. The compliance

filing shall provide the Commission and the Department with the following information:

- a. Notice when service to the first customer outside the municipalities commences;
  - b. One year from the above date, the number of customers having received or receiving service outside the municipalities along with their rate class and in-service date;
  - c. One year from the above date, the total number of customers in each class, whether they are within or outside the municipalities, and the total volume of gas received by each class, broken down between customers within the municipalities and outside the municipalities;
  - d. One year from the above date a forecast of the information provided in subpart c;
  - e. One year from the above date, a summary of all complaints submitted orally or in writing by customers outside the municipalities along with a description of the resolution or status of those complaints.
6. The Commission will review the UNG/Brownton and UNG/UGS agreements in Docket G-6960/16-317 and not in this docket.

The Commission's decision in Docket No. G6960/M-16-214 was based on Minnesota Statutes. As stated in Minnesota Statute §216B.01, the overall purpose of regulation is to ensure that public utilities provide adequate and reliable service at reasonable rates. This oversight function resides primarily with the Commission but there are instances in which the Commission may change the level of oversight it provides. At least two statutes discuss when the Commission might not regulate rates for natural gas service to municipalities given certain restrictions.

Minnesota Statute § 216B.02, subd. 4 states:

"Public utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof.... In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided

a resolution of the city council requesting exemption from the regulation is filed with the commission. [Emphasis added.]

Minnesota Statute § 216B.16, subd. 12 states:

- (a) A municipality may file with the Commission a resolution of its governing body requesting exemption from the provisions of this section for a public utility that is under a franchise with the municipality to supply natural, manufactured, or mixed gas and that serves 650 or fewer customers in the municipality as long as the public utility serves no more than 5,000 customers.
- (b) The commission shall grant an exemption from this section for that portion of a public utility's business that is requested by each municipality it serves. Furthermore, the commission shall also grant the public utility an exemption from this section for any service provided outside of a municipality's border that is considered by the commission to be incidental. The public utility shall file with the commission and the department all initial and subsequent changes in rates, tariffs, and contracts for service outside the municipality at least 30 days in advance of implementation.

To the Department's knowledge, Minnesota statutes do not address the interaction between the Commission's regulation over public utility service and the transfer of the regulatory oversight of that service to an entity other than a municipality. The Department would appreciate further explanation not only as to what United's proposal encompasses but also an explanation of how the proposal would meet the relevant legal requirements. The Department also recognizes that other forms of local government, such as tribal entities may operate under state, federal and tribal law, which may be applicable to this situation.

### **III. DEPARTMENT'S ANALYSIS**

Overall, the Department supports provision of reasonably priced, reliable natural gas service in Minnesota. Subsequent to the difficulties that Minnesota propane consumers experienced during the polar vortexes in 2013 and 2014, there have been several efforts to extend natural gas service to more people in Minnesota. Some of these efforts include extensions of intrastate pipelines and, at times, using smaller public utility providers. As noted above, Minnesota Statutes allow smaller natural gas utility providers to be exempted from rate regulation in Minnesota if the public utility meets certain requirements. Two important requirements are 1) the public utility must enter into an agreement with a municipality to provide service and 2) the municipality must file a resolution with the

Commission that requests an exemption from Commission regulation for the qualifying public utility.<sup>1</sup>

Here, United's request is not made by a municipality, which as noted earlier, Minn. Stat. § 216B.16, subd. 12 seems to contemplate. In addition, UNG does not identify whether it is seeking an exemption from Commission regulation on the basis of "incidental service" or some other factor.

After reviewing the Commission's 2016 Order and the applicable statutes, the Department concludes that United needs to show that the Commission can exempt service to the Tribe from Commission regulations, whether based on relevant Minnesota, Federal or Tribal laws.

While the Department recognizes that the provision of natural gas service by UNG to the Lower Sioux community likely provides public policy benefits, the Department notes that UNG did not provide any legal, financial or operational support for its request to be exempted from Commission regulation for provision of natural gas service to the Tribe. United bears the burden of demonstrating that its request satisfies relevant statutes.

#### **IV. RECOMMENDATION**

The Department concludes that UNG has not provided sufficient information to support informed recommendations or decisions as to the appropriateness of allowing United to extend its exemption from Commission regulation for the Municipalities to the natural gas service it is proposing to provide to the Tribe. Thus, the Department recommends that the Commission issue a request for comments in this proceeding and in Docket No. PL6580/M-16-1026. The Department would appreciate additional information related to UNG's proposal and an explanation of how the proposal would meet the relevant legal requirements.

/lt

---

<sup>1</sup> The Department notes that the practice is for the utility requesting exemption to file a resolution issued by the municipality.

## **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  
Request for Comments**

**Docket No. PL6580/M-16-1026 and G6960/M-16-214**

**Dated this 7<sup>th</sup> day of April 2017**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_16-214_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_16-214_Official
John	Lindell	john.lindell@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_16-214_Official
Douglas	Lund	doug.lund@ufcmn.com	United Natural Gas, LLC	705 E. 4th Street PO Box 461 Winthrop, MN 55396	Electronic Service	No	OFF_SL_16-214_Official
Al	Poehler	ctclerk@comcast.net	City of Courtland	300 Railroad St  Courtland, MN 56021	Electronic Service	No	OFF_SL_16-214_Official
Darren	Saffert	lafcityclerk@gmail.com	City of Lafayette	700 Ninth St PO BOX 375 Lafayette, MN 56054	Electronic Service	No	OFF_SL_16-214_Official
James	Stenson		Nicollet County	501 South Minnesota Avenue  St. Peter, MN 56082	Paper Service	No	OFF_SL_16-214_Official
Teresa	Wenninger	teresa.wenninger@ufcmn.com	United Farmers Cooperative	PO Box 461  Winthrop, MN 55396	Electronic Service	No	OFF_SL_16-214_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_16-214_Official



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_16-1026_M-16-1026
Kristine	Anderson	kanderson@greatermngas.com	Greater Minnesota Gas, Inc.	202 S. Main Street  Le Sueur, MN 56058	Electronic Service	No	OFF_SL_16-1026_M-16-1026
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_16-1026_M-16-1026
Nicolle	Kupser	nkupser@greatermngas.com	Greater Minnesota Gas, Inc.	202 South Main Street P.O. Box 68 Le Sueur, MN 56058	Electronic Service	No	OFF_SL_16-1026_M-16-1026
John	Lindell	john.lindell@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_16-1026_M-16-1026
Greg	Palmer	gpalmer@greatermngas.com	Greater Minnesota Gas, Inc.	PO Box 68 202 South Main Street Le Sueur, MN 56058	Electronic Service	No	OFF_SL_16-1026_M-16-1026
Eric	Swanson	eswanson@winthrop.com	Winthrop Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_16-1026_M-16-1026
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_16-1026_M-16-1026