

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: April 18, 2017 ***Agenda Item #5**

Company: Greater Minnesota Transmission, LLC (GMT)

Docket Nos. **PL6580/M-16-1026**

In the Matter of a Petition by Greater Minnesota Transmission, LLC's (GMT) for Approval of a Firm Gas Transportation Agreement with United Natural Gas, L.L.C. (UNG), a subsidiary of United Farmers Cooperative (UFC).

G6960/M-16-214

In the Matter of a United Natural Gas's Supplement Document Petition for an Expansion of its Small Gas Utility Franchise Exemption Granted in Docket No. G-6960/M-16-214 to Include the Lower Sioux Indian Community and Other Surrounding Areas.

Issues: Should the Commission approve Greater Minnesota Transmission, LLC's petition for a Firm Gas Transportation Agreement providing intrastate pipeline transportation services to United Natural Gas, L.L.C. (UNG) who will provide retail natural gas sales services to Morton, MN, the Lower Sioux Indian Community, and surrounding areas?

Should the Commission direct staff to issue a notice establishing a period of comment for interested parties on UNG's request to expand its small gas utility franchise exemption?

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Relevant Documents

Docket No. PL-6580/M-16-1026

Greater Minnesota Transmission, LLC (GMT) – Petition (Non-Public).....December 7, 2016
Department of Commerce (Department) – Comment (Non-Public)January 6, 2017
GMT – Reply Comments.....January 11, 2017
GMT – Letter requesting placement on the Commission's Agenda.....March 7, 2017
Department – Request for Comments for Docket No. 16-214 Letter Petition.....April 7, 2017
GMT – LetterApril 10, 2017

Docket No. G-6960/M-16-214

Commission OrderMay 24, 2016
UNG Supplemental Document (Letter & 2 attachments)February 7, 2017

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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Statement of the Issues

Should the Commission approve Greater Minnesota Transmission, LLC's petition for a Firm Gas Transportation Agreement providing intrastate pipeline transportation services to United Natural Gas, L.L.C. (UNG) who will provide retail natural gas sales services to Morton, MN, the Lower Sioux Indian Community, and surrounding areas?

Should the Commission direct staff to issue a notice establishing a period of comment for interested parties on UNG's request to expand its small gas utility franchise exemption?

Introduction

Greater Minnesota Transmission, LLC (GMT) is seeking Commission approval for its December 7, 2016 Firm Transportation Agreement (Agreement)¹ with United Natural Gas, L.L.C. (UNG); where GMT proposed to provide intrastate pipeline transportation services for UNG's natural gas distribution project.² UNG is a wholly owned subsidiary of United Farmers Cooperative (UFC).³ The proposed agreement will provide transportation services and will enable UNG to provide natural gas to customers who currently do not have access to natural gas.

On January 6, 2017, the Department recommended that the Commission approve the GMT/UNG transportation agreement enabling UNG to provide retail natural gas services to Morton, MN, the Lower Sioux Indian Community, and the surrounding area. The Department believes the Agreement is in the public interest.

On February 7, 2017, UNG filed a letter requesting approval for a Small Gas Utility Franchise Exemption, along with its Final Rates/Services & Regulation Book. It appears to staff that UNG seeks to expand its Docket No. 16-214 small gas utility franchise exemption to include the service provided once the 35-mile GMT intrastate pipeline is constructed in Docket No. 16-1026, to the City of Morton, MN, the Lower Sioux Indian Community, and other surrounding areas.

On April 7, 2017, the Department submitted comments in Docket Nos. 16-214 and 16-1026, regarding UNG's request to expand its small gas utility franchise exemption to include the City of Morton, Lower Sioux Indian Community, and other surrounding areas. The Department was concerned that UNG had not provided the necessary legal, financial, or operational support for

¹ Pursuant to Minn. Stat. § 216B.045, Subd. 4, the Agreement may not become effective until it is approved by the Commission.

² GMT's asset portfolio includes several other intrastate pipelines throughout MN that delivers natural gas to MN Local Distribution Companies (LDC). Many of these LDCs are owned by Cooperatives.

³ UNG is a wholly owned subsidiary entity of United Farmers Cooperative (UFC) that operates independently on an arms-length basis from UFC. UFC has a solid track record of doing business in the affected communities and throughout Minnesota. UFC's members receive co-op proceeds, which money goes directly back into the local communities. UFC has served the Lafayette, Klossner, and Courtland areas, as well as other communities, for 100 years; and, it seeks to enhance the economic stability of the target communities by providing an affordable energy source. [See GMT's December 10, 2016 petition in Docket No. 15-1041, p. 4]

its requested service area expansion. The Department asked the Commission to issue a request for comments from interested parties on UNG's exemption request.

On April 10, 2017, GMT submitted a letter asking the Commission to proceed with making a decision in the 16-1026 docket.

PUC staff generally agrees with the Department's recommendation that the GMT/UNG Agreement is in the public interest and should be approved, but PUC staff provides additional discussion concerning:

- Whether UNG will meet the small gas utility franchise exemption requirements under Minn. Stat. § 216B.16, subd. 12 – regarding the incidental customer usage outside of the municipalities' borders.
- The TBS cost recovery. (see staff's discussion)
- UNG's involvement in this docket. (see staff's discussion)

Staff does not recommend the Commission make a decision at this meeting on the merits of UNG's request for a small gas utility exemption to serve in the City of Morton, the Lower Sioux Indian Community, and other surrounding areas. However, staff does recommend the Commission direct staff to issue a notice that would move UNG's request to a new docket and confirm that discovery and comment from parties should proceed according to the instructions in the Commission notice. Staff does not believe a procedural matter of this nature needs to be decided by the Commission but is bringing this matter to the Commission's attention because it specifically relates to GMT's request for approval of its transportation contract to UNG in the 16-1026 docket.

Relevant Statutes

Regulation of Intrastate Natural Gas Pipeline. Minn. Stat. § 216B.045.

Subd. 1. Definition of intrastate pipeline.

....."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.⁴

Subd. 2. Reasonable rate.

Every rate and contract relating to the sale or transportation of natural gas through an intrastate pipeline shall be just and reasonable. No owner or operator of an intrastate pipeline shall provide

⁴ Further, 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.

intrastate pipeline services in a manner which unreasonably discriminates among customers receiving like or contemporaneous services.

Subd. 3. Transportation rate; discrimination.

Every owner or operator of an intrastate pipeline shall offer intrastate pipeline transportation services by contract on an open access, nondiscriminatory basis.⁵

Subd. 4. Contract; commission approval.

No contract establishing the rates, terms, and conditions of service and facilities to be provided by intrastate pipelines is effective until it is filed with and approved by the commission. The commission has the authority to approve the contracts and to regulate the types and quality of services to be provided through intrastate pipelines.⁶

Public utility. [defined] - Minn. Stat. § 216B.02, subd. 4

“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. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility.....

Exemption for small gas utility franchise - Minn. Stat. § 216B.16, subd. 12

- 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 a total of 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

⁵ To the extent the intrastate pipeline has available capacity, the owner or operator of the intrastate pipeline must provide firm and interruptible transportation on behalf of any customer. If physical facilities are needed to establish service to a customer, the customer may provide those facilities or the owner or operator of the intrastate pipeline may provide the facilities for a reasonable and compensatory charge.

⁶ The approval of a contract for an intrastate pipeline to provide service to a public utility does not constitute a determination by the commission that the prices actually paid by the public utility under that contract are reasonable or prudent nor does approval constitute a determination that purchases of gas made or deliveries of gas taken by the public utility under that contract are reasonable or prudent.

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.

- c) However, the commission shall require the utility to adopt the commission's policies and procedures governing disconnection during cold weather. The utility shall annually submit a copy of its municipally approved rates to the commission.
- d) In all cases covered by this subdivision in which an exemption for service outside of a municipality is granted, the commission may initiate an investigation under section 216B.17, on its own motion or upon complaint from a customer.
- e) If a municipality files with the commission a resolution of its governing body rescinding the request for exemption, the commission shall regulate the public utility's business in that municipality under this section.

Greater Minnesota Transmission, LLC (GMT) - Docket No. PL-6580/M-16-1026

On December 7, 2016, GMT filed its Petition for Commission approval of its Agreement to provide intrastate pipeline transportation services to the UNG. The Agreement sets forth the terms and conditions of intrastate pipeline services including the transportation rates charged to UNG.⁷

GMT will construct approximately 35 miles of new 6" diameter transmission line from its existing Town Border Station (TBS) located at its interconnection with the Hutchinson Intrastate Pipeline, near Lafayette, MN. GMT will transport natural gas to UNG's proposed interconnections for Morton, MN, the Lower Sioux Indian Community, and surrounding area. GMT and UNG have entered into a 15-year agreement. GMT stated that the intrastate pipeline will be constructed to operate at 100 psi, but will initially operate at 90 psi.⁸

UNG will procure its own natural gas supply and will construct the necessary distribution facilities to make retail sales and transportation services available. UNG will purchase its natural gas supply at the interconnection of Northern Borders Pipeline (NBPL) and the Hutchinson Intrastate Pipeline.⁹ In addition to paying GMT's transportation rates, UNG will pay Hutchinson's transportation rates.

GMT stated that it believes its proposed facilities should not be classified as a retail public utility and should not fall within the scope of the Commission's jurisdiction governing retail gas local

⁷ See GMT's December 7, 2016 petition, Exhibit A. pp. 1-7, with certain language marked as "**Trade Secret.**"

⁸ See GMT's December 7, 2016 petition, p. 4.

⁹ A liquid point on NBPL, similar to Ventura on NNG.

distribution companies (LDC) because GMT provides only intrastate pipeline transportation services and will not provide retail natural gas sales services.

GMT's petition provided a negotiated monthly per Dth demand rate and a per Dth commodity rate that UNG will pay for an hourly natural gas delivery commitment at each city gate.¹⁰ GMT believed its agreement with UNG was a result of a cooperative effort to reach the unserved areas. GMT also believed that its negotiated rates were based on market conditions and represent arm's-length transactions between the parties and were reasonable.¹¹ GMT believed that the Agreement will allow it to bring natural gas to new areas, and will enhance the ability to compete in a new and changing economy.¹²

GMT further justified its intrastate pipeline status by stating:

- GMT would willingly enter into negotiations with other similarly situated distribution entities to discuss similar cooperative arrangements that would serve the public interest in other respective communities, thus there was no discriminatory element to the Agreement and GMT has complied with its statutory obligation to offer its service on an open-access basis; and
- The negotiated Agreement reflects a partnership between the entities working together to serve the public interest. The Agreement benefits UNG and its customers, the communities, and their local economy; and
- The Agreement will benefit GMT and its customers by contributing to GMT's economic viability and its ability to serve historically unserved and underserved populations.

Department of Commerce

Requirements of Minnesota Statutes and Rules

The Department reviewed GMT's petition and the Agreement to determine if GMT's proposed facilities should be classified as an "intrastate pipeline"¹³ and further to determine if the Agreement was entered into as part of an arm's length negotiation.

The Department concluded that GMT was not a public utility because it does not furnish retail natural gas sales services. As such, GMT is not subject to the same Minnesota Rules and Statutes as a regulated LDC that provides retail sales and transportation services. The Commission has not promulgated rules applicable to intrastate pipelines under Minnesota Statute

¹⁰ See GMT's initial petition dated December 7, 2016, marked as "**Trade Secret**," p. 4. The intrastate pipeline's capacity will be shared between Morton, the Lower Sioux Indian Community, and the surrounding area.

¹¹ Both GMT and UNG have signed the transportation contract attached to GMT December 7, 2016 petition as Exhibit A.

¹² The presence of natural gas is a benefit to attracting, creating, and maintaining commercial and industrial anchors, bringing a competitive advantage to the areas. Lower energy costs, increased returns to UFC members, and commercial competitiveness will all serve to increase each area's prosperity.

¹³ To determine if Minn. Stat. § 216B.045, Subd. 2 is applicable.

§ 216B.045; as such, there appear to be no Minnesota Rules that specifically apply to GMT's intrastate transportation services.

GMT must meet the conditions listed in Minnesota Statute §216B.045, which 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 contract 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).

Contract at Reasonable Rates

The Department noted that most regulated utility rates are cost of service based and the reasonableness of the rate can be determined by reviewing the cost of service. However, reasonable rates may be negotiated as part of an arm's length transaction. In simple terms, the reasonableness of the rate could be determined because all parties involved have agreed to the negotiated rates. The Department was generally in agreement with GMT's reasoning that its proposed cost-recovery mechanisms were for the pipeline-related services associated with this project and are similar to other GMT intrastate pipeline projects.¹⁴

Obligation to Offer Service

GMT is required to offer services on an open access, non-discriminatory basis.¹⁵ GMT's petition indicated that it would be willing to enter into negotiations with other similarly situated entities to discuss similar agreements to serve other communities. The Department concluded that GMT was offering its intrastate transportation services on an open-access, non-discriminatory basis.

Approval of the Transportation Agreement

GMT stated that it wishes to start providing intrastate pipeline services beginning on the later of (i) September 1, 2017, or (ii) the date GMT completes the facilities construction. The Department believes the proposed effective dates are consistent with Minnesota Statutes.

Financial Analysis

The Department's primary concern was to determine if the proposed GMT project would be financially viable and would not have a negative impact on GMT's overall financial health. The Department believed, based on its review of the Agreement, that the proposed negotiated rates provide reasonable benefit to UNG's customers and allows GMT an opportunity to earn an acceptable return and provide sufficient debt coverage.

¹⁴ Docket Nos. PL6580/M-06-1063; PL6580/M-13-91; PL6580/M-13-94; PL6580/M-14-386; G022/M-14-342; PL6580/M-14-1056; PL6580/M-15-967; PL6580/M-15-968; and PL6580/M-15-1041, PL6580/M-16-936.

¹⁵ Minn. Stat. § 216B.045, Subd. 3.

The Department believes its negotiated rate concerns are relieved by Minn. Stat. § 216B.045, subd. 5, which provides a Commission complaint process that could be used to resolve any rate disputes that may arise between GMT and its customers.¹⁶

Contingencies Evaluated

The Department developed financial impact scenarios for this project to test the economic viability of GMT's proposal. For each scenario, the Department calculated the break-even point to maintain its Fixed Charge Coverage Ratio under the project loan terms. The Department concluded that if GMT's project was constructed and operated in accordance with GMT's assumptions, GMT will earn a reasonable return over the contract term.¹⁷

Further, the Department included an additional analysis scenario - annual load utilization factor. Annual load utilization factor is a useful metric for this type of analysis in that it allows the Commission to identify the financial impact at different operational levels. The Department concluded that the annual load utilization factor for the project proposed in this docket (16-1026) is lower than the annual load utilization factors for the projects in the 15-967, 15-968, 15-1041, and 16-936 dockets.¹⁸

UNG Utility Status

The Commission addressed 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 to serve the municipalities of Lafayette and Courtland, MN and the incidental service to rural areas outside the municipalities borders. However, Ordering Point 4 of the Commission's May 24, 2016 stated:

"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."

The Department requested that GMT or UNG address UNG utility status in its *Reply Comments*.

¹⁶ Minn. Stat. § 216B.045, Subd. 5. Complaint - Any customer of an intrastate pipeline, any person seeking to become a customer of an intrastate pipeline, the department, or the commission on its own motion, may bring a complaint regarding the rates, contracts, terms, conditions, and types of service provided or proposed to be provided through an intrastate pipeline, including a complaint that a service which can reasonably be demanded is not offered by the owner or operator of the intrastate pipeline. If a complaint involves the question of whether or not an intrastate pipeline has capacity available, the commission shall after hearing make a determination of the available capacity but shall not impair the owner or operator of the intrastate pipeline contractual obligation to provide firm transportation service. If a complaint concerns the use of available capacity by one or more customers of an intrastate pipeline, the commission shall after hearing determine the reasonable use of the available capacity by the customers. The commission shall not require an owner or operator of an intrastate pipeline to expand its available capacity but may require the owner or operator to maintain a reasonable quality of service. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest. Complaints brought under this subdivision shall be governed by section 216B.17.

¹⁷ The Department's review included financial scenarios of: 1) lower volumetric revenues; 2) higher capital costs, and a combination of lower volumetric revenues and higher capital costs. See the Department "**Trade Secret**" January 6, 2017 Comments, pp. 4-8.

¹⁸ See the Department "**Trade Secret**" January 6, 2017 Comments, pp. 8-9.

Department Recommendation

The Department recommended the Commission approve the GMT/UNG Transportation Agreement, where GMT will provide intrastate pipeline transportation services to UNG who will provide retail distribution services.

The Department further recommended that GMT include the UNG Project in the annual load utilization factor report required in prior dockets (e.g., PL-6580/M-967, PL-6580/M-968, and PL-6580/M-15-1041).

The Department requested that GMT or UNG address UNG's utility status for this project's service area in its Reply Comments.

GMT's Reply Comments

In its Reply Comments, GMT noted UNG was not a party to this docket, and UNG would not be submitting Reply Comments. GMT stated that it communicated with UNG and was advised that UNG intends to file a request to extend its current exemption to include the service area indicated in this agreement. GMT further stated given the Commission's prior decisions, the Commission would not be inclined to consider the issue of whether UNG intends to seek (or would be granted) extension of its exemption in this docket. GMT believes Commission consideration should proceed without regard to the status of any prospective filing by UNG.¹⁹

PUC Staff Comment

PUC staff reviewed GMT's petition and appreciates the Department's January 6, 2017 comments. PUC staff believes that the Department's analysis addressed most of the relevant issues, but will provide additional discussion on GMT's petition.²⁰

PUC staff further appreciates the efforts of GMT, Morton, the Lower Sioux Indian Community, and UNG who have worked together to develop a plan to bring natural gas into previously unserved areas. With the concern illustrated by Governor Dayton's Executive Order 14-02 about the availability of propane in past winter heating seasons, PUC staff believes that making natural gas distribution service available to those who currently do not have this option will provide additional benefits and stability to not only UNG, but also to Morton and the Lower Sioux Indian Community.

¹⁹ A question related to UNG's prospective exemption application was raised by Commission staff in preparation for the Commission's consideration of a similar transportation agreement in Docket No. PL6580/M-15-1041. While GMT, the Department, and Commission Staff then provided information about the exemption-related question in that docket, the Commission ultimately indicated during its agenda meeting discussion that questions related to UNG's prospective exemption application were not relevant to the transportation agreement docket at issue.

²⁰ See the Department "Trade Secret" January 6, 2017 Comments, pp. 1 – 9, marked as "Trade Secret."

PUC staff is in agreement with the Department that the GMT/UNG transportation agreement and resulting UNG distribution project serves the public interest, but staff concerns are as follows:

- Whether UNG meets the Minn. Stat. § 216B.16, subd. 12 (b) requirements, where any load outside the municipalities' borders must be incidental to qualify for a small gas utility franchise exemption. and
- GMT filed its estimated construction costs in Exhibit C of its petition.²¹ GMT's petition stated that its proposed intrastate pipeline would use the same TBS built in Docket No. PL6580/M-15-1041.²² GMT's transportation rates in this docket did not include any of the TBS costs, GMT's Docket No. 15-1041 transportation rates include all the TBS costs. On the surface, the transportation rates from both dockets appear to be reasonable from UNG's prospective, but the customers from Docket No. 15-1041 are paying for the entire TBS costs, with Docket No. 16-1026 customers not paying for any of the TBS costs. Staff believes that this TBS cost assignment is incorrect, that the customers from both dockets should share in the cost recovery of GMT's TBS.
- GMT also stated that UNG is not a party in Docket No. 16-1026 and that UNG would not be filing Reply Comments for this reason. Regardless of that, because UNG signed the contract and is a party to the contract which GMT is asking the Commission to approve, the Commission may wish to ask UNG about its intention regarding its "utility" status. Staff understands that Morton is a municipality based on its website that reflects a mayor and city council. But, staff is unsure of the Lower Sioux Community's utility status, whether it can be exempted under Minn. Stat. § 216B.16, subd. 12 (b) in the same way as a municipality. Staff believes this information could be useful to the Commission when it makes its decision approving or disapproving the GMT/UNG Agreement.

It appears to staff that UNG is requesting the Commission to approve an expansion of its existing small gas utility franchise exemption to include the City of Morton, Lower Sioux Indian Community, and other surrounding areas in addition to the Cities of Lafayette and Courtland, and surrounding areas previously approved in Docket No. 16-214. See staff's below discussion.

United Natural Gas, LLC, a retail natural gas provider

As discussed above, UNG is a wholly owned subsidiary of UFC. PUC staff believes that UNG is an investor owned corporation with UFC being the parent - owned by all the shareholders of the UFC Cooperative.²³

Arm's Length Transaction

After reviewing GMT's Petition and the Department's comments, PUC staff believes that all parties have acted independently of each other and in each parties' best interest, thus, the Agreement seems to be fairly negotiated. The jointly signed Agreement could be considered proof that the parties have negotiated in good faith and to serve the public interest.

²¹ GMT petition, Exhibit C, marked as "**Trade Secret**" - Capital Budget and Cost of Service.

²² See GMT's Docket No. 15-1041 petition, Exhibit C, marked as "**Trade Secret**" - Capital Budget and Cost of Service.

²³ UNG's corporation structure could insulate UFC's shareholders from certain liabilities incurred while during business.

Negotiated Rates

GMT's demand and commodity rates reflected in the Agreements *were not* based on an underlying cost of service calculation, but have been negotiated based on an arm's length transaction with UNG for a 15-year contract term. The Department stated that it believes the rates were negotiated fairly based on the information in the record - PUC staff agrees.

Subsequent New GMT Contracts using the Facilities

Because the Commission must approve all subsequent GMT intrastate pipeline customer agreements, PUC staff is not concerned that the Morton and Lower Sioux Indian Community could subsidize new customers once the intrastate pipeline is in-service.

Load Utilization Factor²⁴

In Docket Nos. 15-967, 15-968, and 15-1041, the Commission ordered GMT to provide in its annual load utilization compliance report, the load utilization factors for all of its intrastate pipelines and pipeline segments, by contract. PUC staff believes the Commission may wish to require GMT to include the UNG Agreement in this annual report.

Provision of Incidental Service Outside Municipal Borders**Docket No. 15-1041 – Commission Action**

GMT filed a similar petition to this one in the 15-1041 docket. In the petition, GMT requested permission to construct an intrastate pipeline to serve the communities of Lafayette, Courtland, and Klossner, and the customers along GMT's proposed intrastate pipeline route (located outside the municipalities borders). Staff was concerned whether United Natural Gas, LLC (UNG) met the requirements of Minn. Stat. § 216B.16, subd. 12, specifically in regard to the "incidental" load outside the municipalities' borders requirement.

Minn. Stat. § 216B.16, subd. 12 (b) states:

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. [Emphasis added]

GMT's February 17, 2016 letter (Docket No. 15-1041) provided its interpretation of "incidental."

"The term 'incidental' is commonly recognized to mean contingent upon, pertaining to, subordinate to, or attendant to something of greater importance. Black's Law Dictionary defines 'incidental' as 'depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the

²⁴ An approximate load utilization factor can be calculated, but that information has been marked as "**Trade Secret.**"

principal.” Henry Campbell Black, Black’s Law Dictionary 762 (6th ed.1990). The Minnesota Supreme Court held that “‘incidental’ has much the same meaning as ‘accessory’ and ‘subordinate’ and is used to convey the idea of a thing being subordinate to, dependent on, and pertaining to another thing which is the principal one.” Lowry v. City of Mankato, 42 N.W.2d 553, 558 (Minn., 1950).”

In the 15-1041 docket, GMT stated that UNG’s customers that are located outside of the various municipal borders would only be served because of their close proximity to the line being constructed to serve the municipalities. Service to those customers would not exist independently of the project to serve the municipalities. Therefore, the customers meet the common definition of the term “incidental” and service to them would be appropriate under a small gas utility franchise exemption.²⁵

The Commission approved the GMT/UNG transportation agreement in Docket No. 16-214, agreeing with the Department’s recommendations.²⁶

Other Alternatives

If the Commission determines the forecasted customer load for customers who are outside of the municipalities’ borders is not “incidental,” the Commission could:

1. Approve the proposed GMT/UNG project anyway, based on the facts of GMT’s and UNG’s unique circumstances in this docket but without setting precedent and allow future petitions requesting approval of intrastate pipeline contracts to be decided on a case-by-case basis. and

Encourage UNG to provide natural gas retail sales service to all of its projected customers, including the customers outside of the municipalities’ borders, as a non-exempt, regulated natural gas utility company.

or

2. Encourage UNG to serve as many customers as economically feasible but only within the municipal boundaries of Morton, if Morton is an incorporated municipality. This would preserve UNG’s small gas utility exemption and would allow UNG to provide retail sales services to customers inside the municipalities’ borders who currently do not have access to natural gas.

or

²⁵ PUC staff was of the opinion that Minn. Stat. § 216B.16, subd. 12 (b) use of the term “incidental” could be interpreted as meaning that customer load generated outside of the municipal borders must be small in comparison to customer load inside the municipal’s borders. In other words, the majority of customer load would have to be located within the municipality’s borders and that only a small amount of customer load could come from outside of the municipality’s borders. See Docket No. 15-1041 – staff’s briefing papers dated February 19, 2016, p. 9.

²⁶ Staff believed that the customers located outside the municipalities of Lafayette, Klossner and Courtland were not completely without recourse or protection against UNG charging unfair or unreasonable rates. No one will be required to switch to natural gas. Also, under the small gas utility exemption statute (Minn. Stat. § 216B.16, subd. 12), the Commission may initiate an investigation of UNG under Minn. Stat. § 216B.17, on the Commission’s own motion or upon complaint from a customer. See the Commission’s May 24, 2016 Order approving the transportation agreement.

3. Require UNG to get approval from each of the township boards (or other local governing body in the unincorporated municipalities)²⁷ in which it provides incidental service. The approval would be in the form of a resolution stating that the local governing body supports the small gas utility franchise exemption for the service provided within its jurisdiction. The resolution would also state that the local governing body understands that it can pass a resolution at any time rescinding the exemption and asking the Commission to initiate an investigation into whether it should regulate the rates of the utility's business in that jurisdiction.

UNG's Small Gas Utility Franchise Expansion Request - Docket No. 16-214

UNG

On February 7, 2017, UNG filed its "Supplemental Document" in Docket No. 16-214. UNG requested Commission approval for an exemption from Commission regulation to serve the Lower Sioux Indian Community (Lower Sioux). GMT's petition (Docket No. 16-1026) indicated that UNG would also be providing service to the City of Morton. The filing seeks to expand its existing Commission exemption from regulation previously granted to UNG in Docket No. 16-214 (to serve the Cities of Lafayette and Courtland).

In its letter, UNG stated that it had concluded negotiations with the Lower Sioux to provide natural gas service to its community. Staff believes UNG will also provide natural gas to the City of Morton and the surrounding area of the GMT intrastate pipeline build.²⁸ UNG also stated that it provided its updated Final Rates/Service & Regulations Book and a map identifying the facilities that UNG anticipates installing in order to provide service. [Staff has not been able to locate the updated Final Rates/Service & Regulations Book in the materials submitted on February 7, 2017 but has located the map.] In support of its request, UNG explained that it would not exceed 2,000 customers with the additional customers located in the Lower Sioux community.²⁹ ³⁰ ³¹

Department

The Department commented that the Commission Order in Docket No. 16-214 (dated May 24, 2016) was specific regarding UNG's exemption from Commission's oversight on rate regulation. Specifically, Ordering Point 1 stated:³²

²⁷ This requirement could also apply for service provided to the Lower Sioux Indian Community, however, the governing body may be a national governing body rather than a local governing body.

²⁸ Per GMT's Initial Petition.

²⁹ Staff notes that the 2,000 customer count limit has been modified to 5,000 during the 2016 Legislature.

³⁰ UNG's request for exemption from regulation for natural gas service to the Lower Sioux was 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. L6580/M-16-1026.

³¹ UNG's Supplement Document did not provide any customer count projections or estimated usage.

³² See the Commission's Order dated May 24, 2016 in Docket No. 16-214.

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. [Emphasis Added]

Ordering Point 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. [Emphasis Added]

The Department stated that the Commission's decision in Docket No. G-6960/M-16-214 was based on Minnesota Statutes. Further, 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, and Minnesota Statute § 216B.16, subd. 12.

The Department questioned whether UNG's exemption request was made by qualifying entity (Lower Sioux). UNG's supplemental document did not identify whether it is seeking an exemption from Commission regulation on the basis of "incidental service" or some other reason. The Department concluded that UNG bears the burden of demonstrating that its request satisfies relevant Minn. statutes. While the Department recognized that natural gas service to the Lower Sioux community provides public policy benefits, the Department noted that UNG did not provide any legal, financial or operational support for its proposed exemption request.

The Department believed that Minnesota statutes do not address the interaction between the Commission's public utility regulation over service and the transfer of its regulatory oversight of that service to an entity other than a municipality. The Department concluded that UNG must support its exemption request to the Commission that the Lower Sioux can be exempted from Commission regulations, whether the request is based on relevant Minnesota Statutes, Federal or Tribal laws. The Department believed that it needed additional information related to UNG's proposal and an explanation of how the proposal would meet the relevant legal requirements.

Department Recommendations

The Department concluded that UNG has not provided sufficient information to support its exemption request from Commission regulation to extend natural gas services to the Lower Sioux community. The Department recommended that the Commission issue a request for comments in Docket Nos. G-6960/M-16-214 and PL-6580/M-16-1026.

PUC Staff Comment

Staff agrees with the Department's recommendation that UNG's Docket No. 16-214 small gas utility franchise exemption should not be expanded to include the City of Morton, Lower Sioux Indian Community, and surrounding areas until additional information is provided. As the Commission's May 24, 2016 Order states the exemption in docket 16-214 was granted specifically to the Cities of Lafayette and Courtland and incidental service to the surrounding area. In Docket No. 16-1026, GMT stated that it was constructing a 35-mile intrastate pipeline to provide natural gas service to the Lower Sioux Indian Community.

Staff believes that the Commission may wish to consider whether UNG's Docket No. 16-214 exemption can be expand or if it wishes to direct UNG to file a complete petition in a separate docket requesting its Lower Sioux small gas utility franchise exemption. Under either approach, staff believes that UNG has not provided sufficient discussion to support its expansion request.

If the Commission decides to allow UNG to expand its current exemption authorized in Docket No. 16-214, the Commission may wish to direct staff to issue a notice establishing a period of comment for interested parties. Further, the Commission may wish to require UNG to supplement the Docket No. 16-214 record with sufficient information to determine if the Lower Sioux community qualifies for a small gas utility franchise exemption under Minnesota law.

If the Commission wishes to direct UNG to file its Lower Sioux exemption request in a separate docket, the Commission could request the information filed in Docket No. 16-214 be removed from that docket and placed into the newly created docket. If the Commission chooses this option, the Commission may wish to direct UNG to supplement the new docket with sufficient information to determine if the Lower Sioux community qualifies for a small gas utility franchise exemption under Minnesota Law.

Decision Alternatives

Docket No. PL-6580/M-16-1026

Greater Minnesota Transmission, LLC (GMT)/United Natural Gas (UNG) Firm Gas Transportation Agreement

1. Approve the GMT/UNG Agreement (project). (GMT, DOC) or
2. Approve the GMT/UNG Agreement (project) based on the facts of GMT's and UNG's circumstances in this docket but without setting precedent and allow future petitions to be decided on a case-by-case basis. or
3. Do not approve the GMT/UNG Agreement (project). Or

4. Take no action.

If the Agreement is approved, the Commission may also want to

5. Require GMT to include the UNG project in its annual load utilization factor letter.³³ and
6. Require GMT to assign TBS costs at its Hutchinson interconnection to the transportation rates developed in this docket and to correct the negotiated transportation rates in Docket No. 15-1041. Require GMT to submit a compliance filing 30 days after the Commission Order in this docket that explains the allocation and assignment of its TBS costs to the transportation rates in this docket and the transportation rates developed in Docket No. 15-1041. Require GMT to include in this compliance filing a proposal to revise the transportation rates in this docket and in docket No. 15-1041.

“Incidental” nature of UNG’s projected customer load outside the municipality of Morton

7. Determine that UNG’s projected customer load outside the municipality is “incidental” to the project. or
8. Determine that UNG’s projected customer load outside the municipality is not “incidental” to the project. or
9. Take no action.

If the Commission approves Decision Alternative #8

10. Approve the proposed GMT/UNG Agreement anyway, based on the facts of GMT’s and UNG’s unique circumstances in this docket but without setting precedent and allow future petitions requesting approval of intrastate pipeline contracts to be decided on a case-by-case basis. (This part of this alternative (#10) is the same as alternative 2.) and

Encourage UNG to provide natural gas retail sales service to all of its projected customers, including the customers outside of the municipalities’ borders, as a non-exempt, regulated natural gas utility company.

or

11. Encourage UNG to serve as many customers as economically feasible but only within the municipal boundaries of Morton, if Morton is an incorporated municipality. This would preserve UNG’s small gas utility exemption and would allow UNG to provide retail sales services to customers inside the municipalities’ borders who currently do not have access to natural gas.

³³ The Commission required GMT to include in its annual load utilization factor report all of its intrastate pipelines and pipeline segments, see Docket Nos. 15-967 and 15-968, see the Commission February 18, 2016 Order.

or

12. Require UNG to get approval from each of the township boards (or other local governing body in the unincorporated municipalities)³⁴ in which it provides incidental service. The approval would be in the form of a resolution stating that the local governing body supports the small gas utility exemption for the service provided within its jurisdiction. The resolution would also state that the local governing body understands that it can pass a resolution at any time rescinding the exemption and asking the Commission to initiate an investigation into whether it should regulate the rates of the utility's business in that jurisdiction.

or

13. Take no action.

Docket No. G-6960/M-16-214

14. Direct staff to issue a notice establishing a comment period for interested parties on UNG's exemption request. In the notice, direct UNG to provide an explanation of its "utility" status, and whether the Lower Sioux Indian Community is part of Morton or a separate entity. Direct UNG to supplement the record with sufficient information to determine if the Lower Sioux Indian Community qualifies for a small gas utility franchise exemption under Minnesota law.
 - a. Open a new docket for this matter and place the supplemental document submitted by UNG on February 7, 2017, in Docket No. 16-214, into this new docket. or
 - b. Direct staff to issue the notice requesting comments in Docket No. 16-214.

³⁴ This requirement for a resolution could also apply for service provided to the Lower Sioux Indian Community, however, the governing body may be a national governing body rather than a local governing body.