

Staff Briefing Papers

Meeting Date January 9, 2019

Agenda Item **7

Company CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy
Minnesota Gas

Docket No. **G-008/AI-18-517**

In the Matter of the Petition of CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas, for Approval of an Affiliated Interest Agreement between CenterPoint Energy Minnesota Gas and Minnesota Limited

- Issues
1. Does the Commission have jurisdiction to require approval of the proposed CenterPoint Energy/Vectren transaction under Minnesota Statutes §216B.50, §216B.48 and/or §216B.49 before acting on the Affiliated Interest petition?
 2. If the Commission requires approval of the CenterPoint Energy/Vectren transaction, what additional information should CenterPoint Energy be required file?
 3. Should the Commission accept CenterPoint Energy's Stipulation?

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✓ **Relevant Documents**

Date

CenterPoint Energy – Initial Filing	July 30, 2018
Minnesota Public Utilities Commission – Notice of Comment	August 15, 2018
OAG-RUD – Comments	August 15, 2018
CenterPoint Energy – Initial Comments	August 29, 2018
Department of Commerce – Comments	August 29, 2018
CenterPoint Energy – Reply to DOC Comments	September 10, 2018
Department of Commerce – Letter in Lieu of Reply Comments	September 10, 2018
OAG-RUD – Reply Comments	September 10, 2018
CenterPoint Energy – Response to OAG Reply Comments	September 19, 2018
Department of Commerce – Reply Comments	October 2, 2018
CenterPoint Energy – Stipulation	October 26, 2018
Minnesota Public Utilities Commission – Notice of Comment	October 31, 2018
Department of Commerce – Letter Response to Stipulation	November 9, 2018
OAG-RUD – Letter (Response to Stipulation)	November 9, 2018

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I. Statement of the Issues

1. Does the Commission have jurisdiction to require approval of the proposed CenterPoint Energy/Vectren transaction under Minnesota Statutes §216B.50, §216B.48 and/or §216B.49 before acting on the Affiliated Interest petition?
2. If the Commission requires approval of the CenterPoint Energy/Vectren transaction, what additional information should CenterPoint Energy be required to file?
3. Should the Commission accept CenterPoint Energy's Stipulation?

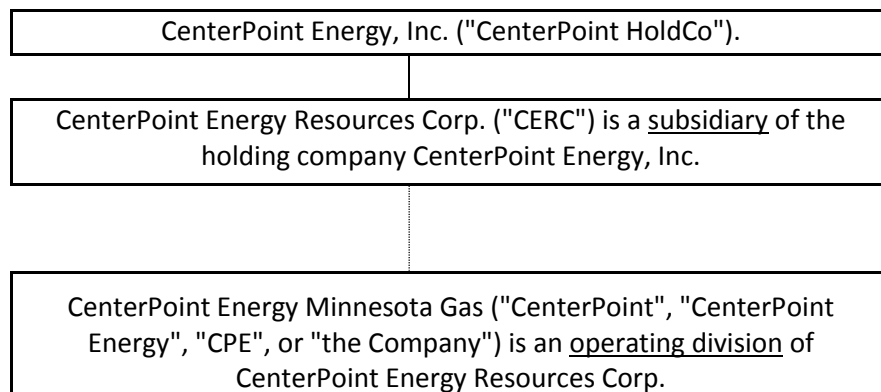
II. Background

On April 23, 2018, CenterPoint Energy, Inc. ("CNP", "CenterPoint HoldCo" or "HoldCo") and Vectren Corporation ("Vectren") announced they had entered into an Agreement and Plan of Merger ("Transaction" or "Merger"). Upon the Transaction's closing, Vectren will continue as a surviving company and become a wholly-owned subsidiary of CenterPoint HoldCo. Also, at this point, Minnesota Limited, LLC ("Minnesota Limited"), a non-regulated subsidiary of Vectren Corporation will become an affiliate of CenterPoint Energy Minnesota Gas ("CenterPoint", "CenterPoint Energy", "CPE", "CPEM", or the "Company").¹

On July 30, 2018, CenterPoint Energy Minnesota Gas filed its petition in this docket requesting approval of its 2018 Metro Belt Line South East ("MBLSE") Replacement Project contract (the "Contract") between the Company and Minnesota Limited.

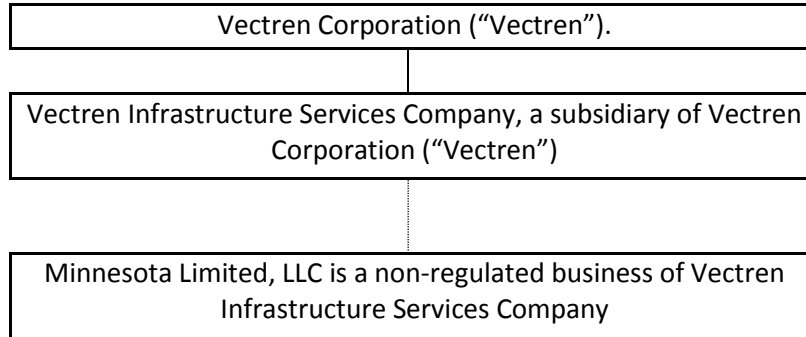
III. The Petitioner and its Affiliates

CenterPoint Energy Minnesota Gas ("CenterPoint", "CenterPoint Energy", "CPE", or the "Company") is an operating division of CenterPoint Energy Resources Corp. ("CERC"). CenterPoint Energy Resources Corp. ("CERC") is a subsidiary of the holding company CenterPoint Energy, Inc. ("CNP", "CenterPoint HoldCo" or "HoldCo").



¹ Proposed Legal Structure after closing is found in the Initial Filing under Exhibit D.

Minnesota Limited, LLC is a non-regulated business of Vectren Infrastructure Services Company, a subsidiary of Vectren Corporation (“Vectren”). Vectren Corporation is an energy holding company with both regulated (gas and electric) and unregulated subsidiaries (infrastructure services and energy services).



After the proposed transaction closes, Vectren will become a subsidiary of CenterPoint Energy, Inc. (“CNP”, “CenterPoint HoldCo” or “HoldCo”).

IV. Parties’ Comments

A. CenterPoint Energy – Initial Filing

On July 30, 2018, CenterPoint Energy filed its petition requesting approval of its Contract between the Company and Minnesota Limited. Since currently there is an existing construction services contract (Contract) between CenterPoint Energy Minnesota Gas and Minnesota Limited, upon the Transaction’s closing that Contract will become subject to the Minnesota Affiliated Interest requirements and rules.

Pursuant to Minnesota Statute §216B.48 and Minnesota Rules part 7825.2200(B), the Company provided the following information:

The Contract was effective on April 23, 2018, expires on February 28, 2019, and relates to services provided in connection with the Company’s 2018 Metro Belt Line replacement project (Project).

The work performed includes all supervision, labor and equipment to install approximately 16,180 feet of 24-inch diameter high pressure steel pipe and three below grade valve vaults and associated piping and regulator work at three locations within the project scope in the City of Golden Valley. There are two railroad crossings and one pedestrian tunnel crossing, which consists of 24-inch diameter steel pipe installed via auger bore. An additional four 24-inch cover sleeves will be installed. Work includes the removal and disposal of some of the existing abandoned pipeline and existing below grade vaults per the design and permit. Approximately 16,180 feet of the new high-pressure steel piping will be pressure tested with nitrogen as required to establish a 215

psig Maximum Allowable Operating Pressure (MAOP), tie-ins, purging and re-energizing of the pipeline.²

The Contract has a target value of \$13,000,000 and covers all supervision, labor and equipment required to install 20" & 24" diameter high pressure steel pipe as well as various diameter low pressure steel pipe and below grade vaults. Additionally, the contractor will complete final restoration of roadways, curbs and gutters. Exact final cost is unknown at this time; however, consistent with accounting rules, costs related to Minnesota Limited's work will be capitalized and subject to review in a future rate case.

As of July 16, 2018, the total amount paid under this contract was \$4,437,167.

As discussed in the Company's most recent rate case,³ CPE's Transmission Integrity Management Plan (TIMP) is developed to comply with the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) rules and requirements. A component of the Company's TIMP is the Transmission Pipeline Replacement Project which includes the repair or replacement of larger transmission line segments identified through the assessment process. Due to the critical nature of the work, it is necessary to use skilled workers to replace transmission pipe that was originally installed in the 1950s.

Minnesota Limited has worked on CenterPoint's distribution system before and is one of the largest transmission pipeline contractors in the region. Since natural gas capital infrastructure investments have increased throughout the country, the demand for qualified transmission and distribution pipeline contractors has increased. To ensure completion of its critical pipeline replacement projects, it is in the public interest that the Company secure qualified and reliable resources. Minnesota Limited has extensive experience in providing pipeline dig services such as excavation, recoating, backfill and remediation in a farm field to deep excavation in saturated wetland areas. Minnesota Limited also provides maintenance services for pipeline systems including valve maintenance, recoating, sleeving, line lowering, pipeline markers, anomaly investigation and right of way clearing.

A competitive bidding process during which five vendors were invited to bid was used. The Company compared costs provided by each bidder, and discussed available capacity with two emerging candidates to assure the best value relative to cost, service, and expertise.

The Contract's scope does not require that Minnesota Limited have access to customer information.

In compliance with the Commission's July 11, 1996 Order in Docket G-008/AI-96-37, CenterPoint stated that until final costs are known, it will be unable to identify additional cost

² Contract terms, costs and conditions are found in the Initial Filing under (Trade Secret) Exhibit B.

³ Centers Direct Testimony, Docket G-008/GR-17-285

savings or ratepayer benefits; however, since a competitive bidding process was used and final costs will be subject to review in its next rate case, ratepayers are assured that final costs will be reasonable. CenterPoint added that the work performed under the Contract is solely related to utility work and does not include work related to the Company's non-regulated business lines or involve corporate costs allocated from CenterPoint Energy Service Company, LLC. Therefore, no changes have been or will be made to the CAM (cost allocation manual/cost allocation methodology) which deals with the allocations of joint costs between regulated and non-regulated operations of CenterPoint Energy Minnesota Gas as a result of this filing.

B. OAG - RUD – Comments

The OAG stated that, since CenterPoint's affiliated interest filing provides no information about the Merger, the Company should provide the following information:

1. Details about the transaction, including at minimum:
 - a. How will the resulting entities be organized?
 - b. How will the transaction be completed?
 - c. Identify and describe the regulated and unregulated subsidiaries of Vectren, and produce copies of credit rating reports about them.
 - d. How will the transaction be funded, where will the funds be acquired, and what impact will that have on CenterPoint's capital structure?
 - e. Will the leadership or organization of CenterPoint Energy, Inc.'s natural gas business change in any way? How?
 - f. Specifically identify all changes for the organization, management, and leadership of CenterPoint Energy Minnesota Gas.
 - g. What benefits will the transaction produce for CenterPoint's Minnesota customers?
 - h. What synergies does CenterPoint anticipate will result from the transaction in both the short and long term? Produce all estimates or analysis of potential synergies, cost savings, or efficiency improvements.
 - i. Will there be any layoffs or job loss in Minnesota?
 - j. How will the transaction affect CenterPoint's cost allocators?
2. If CenterPoint believes that it does not require regulatory approval from the Minnesota Public Utilities Commission, provide the legal and factual justification for that position.
3. Does CenterPoint require regulatory approval from any other regulatory bodies before closing, or has CenterPoint made regulatory filings in other jurisdictions? If so, provide information about those processes and copies of filings.
4. Will CenterPoint at any time require Commission approval for any affiliated interest agreements with Vectren or its regulated or unregulated subsidiaries, other than the one that has been filed for Minnesota Limited?
5. Does CenterPoint intend to do business with or receive services from any of Vectren's service companies? Do any Vectren utilities intend to do business with or receive services from any current CenterPoint utilities or subsidiaries? Does Vectren provide any

services to its utilities that are duplicative of services provided by any CenterPoint affiliates?

6. Does CenterPoint intend to collect any costs for the transaction from Minnesota ratepayers? How and when? What evidence demonstrates that it would be reasonable to do so?
7. How do Vectren utilities perform on service quality, conservation programming, and energy savings? How does that performance compare to CenterPoint's requirements and performance in Minnesota, and how will acquiring Vectren impact CenterPoint's future performance?

The OAG surmised that this information, at a minimum, is necessary in order for the OAG, the Department, and the Commission to review whether the transaction requires regulatory approval, and whether any actions are necessary to protect Minnesota ratepayers. Additionally, to move the regulatory process forward efficiently, CenterPoint, in its initial comments, should provide any other relevant information about the transaction.

C. CenterPoint Energy – Comments

CenterPoint explained that Vectren is also an energy holding company, with holdings that include companies engaged in regulated utility operations in Ohio and Indiana (collectively, Vectren Utilities). Vectren also owns unregulated subsidiaries, including Vectren Infrastructure Services Company, whose businesses include Minnesota Limited. The unregulated subsidiaries, the Vectren Utilities and the energy holding company will be referred to as the Vectren Companies. Since Minnesota Limited will become a CPE affiliate after the Transaction closes, the Construction Contract with CenterPoint Energy will be subject to Minnesota Affiliate Interest requirements and rules.

CenterPoint pointed out that Minnesota Statute §216B.50 states the following:

No *public utility* shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or *merge or consolidate with another public utility or transmission company operating in this state*, without first being authorized so to do by the commission. . . . (emphasis added).

CenterPoint concluded that, since, in this statute, the Legislature has determined that Commission approval of a merger or consolidation is required only if *both* parties to the transaction are “public utilities” and Vectren is not a “public utility” under Chapter 216B, the Commission lacks jurisdiction to approve the Transaction.

CenterPoint stated that, in the past, the Commission has *assumed* jurisdiction over some transactions in which one of the parties to the transaction did not have utility operations in Minnesota; however, that was because the parties either agreed to the Commission's jurisdiction over the transaction or actively sought the Commission's approval. Therefore, the Commission did not need to analyze or discuss the applicability of Minnesota Statute §216B.02, subd. 4 before asserting approval jurisdiction under section §216B.50. Additionally, the

Company cited Minnesota Statutes §216B.03, §216B.08, and §216B.12, subd. 1, as support that the Commission's approval authority applies to two public utilities operating within the State. CPE added that, despite these constraints, the Commission's authority over affiliate interest contracts insures that the Transaction will not adversely affect Minnesota ratepayers.

CenterPoint's position is that the Affiliated Interest Agreement is "reasonable and consistent with the public interest" and should; therefore, be approved. CPE added that the Commission can address any concerns related to Transaction's potential financial impact on Minnesota ratepayers during the Company's next rate case.

Regarding the OAG's questions, CenterPoint asserted that they call for speculation related to future events that may or may not occur and that cannot be answered with a reasonable degree of certainty. Additionally, some questions are unclear as to scope, relevance or definition of the terms used. Despite these limitations, the Company replied to the OAG's questions as follows:

1. Regarding the Transaction:

- a. Attachment 1 shows that CPE's upstream organizational structure will remain unchanged.
- b. CenterPoint is unclear about the information needed to answer the OAG's question regarding how the Transaction will be completed. The Company did provide a copy of the Transaction agreement.⁴
- c. A Vectren Fact Sheet briefly describing its utility holdings was included as Attachment 3 and copies of Vectren credit rating reports were included as (trade secret) Attachment 4.
- d. To fund the transaction, the HoldCo will issue \$2.5 billion in equity, and has secured a \$5 billion unsecured bridge facility and a \$1.6 billion increase to its credit facility. The Transaction will not impact CPE's capital structure.
- e. The Transaction will not change CERC's organizational structure, as a wholly owned subsidiary of the HoldCo, or the Company's as an operating division of CERC. Any potential CERC or CPE leadership changes are undetermined; however, the Transaction does not necessitate any such changes.
- f. No changes to CPE's organization, management or leadership are necessitated or have been identified.
- g. CPE customers will benefit from a financially stronger and more diverse parent company. Additionally, the Transaction provides the opportunity to share best practices for service, reliability and technology across an expanded footprint and offers the opportunity to achieve future cost savings.
- h. Synergies are discussed in g, above.
- i. No layoffs or job losses in Minnesota have been identified as being necessitated or caused by the Transaction.
- j. Although the Transaction will not change any CERC allocation costs, the net impact on the amount of HoldCo costs assigned to CPE is unclear. However, Parties and the

⁴ CenterPoint Initial Comments, Attachment 2.

Commission will have the ability to review the cost allocations in the Company's next Minnesota rate case.

2. The Transaction does not trigger any Minnesota Statute that requires Commission approval.
3. The Transaction requires FERC and FCC approvals.⁵ Additionally, the Transaction may not close before the expiration or termination of the Hart-Scott-Rodino waiting period. The Transaction does *not* require approvals from the Indiana Utility Regulatory Commission (IURC) or the Public Utilities Commission of Ohio (PUCO).
4. It is unknown if CPE will enter into any future agreements with one of the Vectren Companies.
5. CPE is unsure about the information the OAG seeks regarding business dealings/services between Vectren and CenterPoint utilities, subsidiaries or affiliates. The Company stated that, as integration efforts continue, any future business dealings/services are unknown at this time.
6. CPE does not intend to collect transaction costs from Minnesota ratepayers.
7. The Transaction will not directly impact service quality, conservation programming, and energy savings for CPE customers.

D. Department of Commerce – Comments

The Department agreed with the OAG that the record is insufficient to answer the questions posed in the Commission's Notice related to the merger. The Department attempted to locate and review publicly available documents related to the merger,⁶ but agreed with the OAG that it would be beneficial for the Commission, and also procedurally more efficient, for the Company to file information about the merger.

The Department stated that, since the details and structure of the HoldCo-Vectren transaction are unclear, the applicability of Minnesota Statute §216B.50 is also unclear. The DOC noted that, in a regulatory filing with the IURC, the HoldCo submitted an organizational chart showing that, following the Transaction's closing, Vectren will become a HoldCo subsidiary, separate and distinct from CERC, which houses the HoldCo's current natural gas utilities operations (including CPE). However, in the same proceeding, the HoldCo stated that, post-close, the natural gas utilities operations of the combined company will be headquartered in Evansville, Indiana, the site of Vectren's current headquarters. While it is unclear to the Department which specific company functions will be moving to Vectren's headquarters, it seems clear that the HoldCo intends to achieve at least some level of integration between CERC's current natural gas utilities

⁵ Copies of the FERC and FCC petitions are found in Attachments 6 and 7, respectively.

⁶ The Department reviewed various HoldCo and Vectren filings with the Securities and Exchange Commission and the regulatory filings related to the merger made with the Indiana Utility Regulatory Commission and the Public Utilities Commission of Ohio.

operations and Vectren's. Thus, CenterPoint HoldCo's goal in this transaction seems to be to merge Vectren's and CERC's operations without merging their legal structures. Therefore, the nature and degree and the level of integration expected between existing natural gas utilities operations and Vectren's will require further evaluation to determine the applicability of Minnesota Statute §216B.50. The Department added that, to ensure that reasonable costs are allocated to CPE, Vectren's addition to the corporate structure, as well as organizational changes brought about by the integration of existing natural gas operations with Vectren's, may necessitate modifications to the Company's Master Services Agreement with CenterPoint Energy Service Company (ServiceCo), or its cost allocation methodologies. Additionally, there may be merger-related transaction costs (e.g. legal fees, expenses associated with relocating employees and equipment, severance payments for redundant employees, the acquisition premium paid by CenterPoint HoldCo, expenses resulting from the effects of push-down accounting, etc.) that are of a type that the Commission has denied recovery of in the past.

The Department noted that the merger may also impact the HoldCo's credit ratings and cost of capital, which may in turn impact CPE's ability to adhere to the conditions imposed by the Commission's April 8, 2003 Order in Docket G-008/CI-02-1368 regarding the Company's capital structure and authorized rate of return. Specifically, the Company is required to maintain approximately a 50/50 debt/equity ratio, with each debt instrument reflecting the costs associated with that of an A-rated utility at the time the debt instrument is booked.

Additionally, in previous acquisition dockets, the Commission has imposed conditions related to customer service and service quality. For instance, the Commission conditioned its recent approval of Wisconsin Energy Corporation's acquisition of Minnesota Energy Resources Corporation's (MERC) corporate parent on MERC committing to maintain the same level of customer service and maintain or improve its existing service quality and reliability indices over the subsequent two years. The Commission imposed other conditions on that acquisition as well, related to staffing levels at MERC, charitable giving and community involvement, and inter-company financing as well.

The Department agreed with the OAG that the Company should explain whether it believes that the merger requires Commission approval, and if not, to provide the legal and factual basis for that position. Regardless of whether the Commission determines that Minnesota Statute §216B.50 applies, the merger's impacts will need to be evaluated to determine if it is consistent with the public interest, whether it should be approved, approved with conditions, or denied. While the Commission may not have the authority to prevent the merger, the Commission will certainly have jurisdiction over its ultimate impacts on CPE's ratepayers. Potential financial impacts will need to be evaluated before or during the Company's next rate case, and operational impacts related to service quality, reliability, and safety will need to be evaluated in their relevant dockets.

The Department recommended the following procedural process:

1. The Commission should determine whether Minnesota Statute §216B.50 applies. If the Company does not provide an explanation of why the merger requires Commission approval (or if not, why not), the Department recommended that the Commission require the Company to provide such an explanation.

2. If the Commission determines that Minnesota Statute §216B.50 does apply, then parties can proceed to a more in-depth evaluation of whether the merger is consistent with the public interest, and whether it should be approved, approved with modifications, or denied.
3. If the Commission determines that Minnesota Statute §216B.50 does not apply, it can, at the same time, determine whether further analysis of the merger is warranted. The Commission may feel comfortable dealing with merger-related impacts in the Company's next rate case and in other relevant dockets as they come up.
4. Alternatively, the Commission may determine that the organizational and operational changes brought about by the merger merit a Commission investigation into potential ratepayer impacts under the authority granted to the Commission by Minnesota Statute §216B.14, which states:

The Commission upon complaint or upon its own initiative and whenever it may deem it necessary in the performance of its duties may investigate and examine the condition and operation of any public utility or any part thereof. In conducting the investigations the commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the affected parties a hearing.

E. CenterPoint Energy – Reply to DOC Comments

CenterPoint reaffirmed that its upstream organizational structure will not change at closing and will continue to be a CERC operating division, which in turn will continue to be wholly owned by the HoldCo. Moreover, Vectren's downstream ownership structure will not change as it will continue to be wholly owned by Vectren Utilities Holding Inc. (VUHI), which will continue to, in turn, own the three Vectren regulated utilities, none of which have operations in Minnesota.

CenterPoint noted that, following the Transaction's closing, the HoldCo has committed that its natural gas utilities operations will be headquartered in Evansville, Indiana for a minimum of three years. The fact that the gas utility operation headquarters will move from Houston to Evansville and will report to a new chief business officer does not change the core organizational structure under which CPE has operated for many years.

CenterPoint disagreed with the Department's assertion that, to determine whether Commission approval of the Transaction is required under Minnesota Statute §216B.50, more details must be known regarding how post-merger natural gas utility operations will become more integrated or what other "organizational or operational changes" may result. CPE insisted that, since Vectren does not operate in Minnesota, Minnesota Statute §216B.50 does not apply.

CenterPoint acknowledged that, in order to recover any costs, including HoldCo cost allocations, it wishes to include in rates after the merger, the Company continues to bear the burden of proof that such costs are reasonable and were prudently incurred.

Because, as cited by the Department, CenterPoint will continue to be subject to the Commission's Order in Docket G-008/CI-02-1368, the Company believes the DOC's concern regarding possible changes to its credit rating and cost of capital are misplaced.

CenterPoint concluded that, given the Transaction's facts, the Commission's ongoing authority over CPE, and the Commission's specific ability to examine CPE's costs in its next rate case, no Commission action regarding the Transaction is required at this time. Rather, the Commission can proceed to examine the affiliated interest agreement.

F. Department of Commerce – Letter in Lieu of Reply Comments

The Department stated that it has issued discovery regarding questions it has related to the organizational and operational changes expected within the HoldCo's corporate structure following the merger. Since the Company's responses are not due until after the reply comments' deadline. The Department stated that, once discovery replies are received, it will file additional comments with recommendations.

G. OAG-RUD – Reply Comments

The OAG stated that, since the affiliated interest agreement would not be required if the Merger is not approved, the Commission should consider the Merger first. The OAG argued that CenterPoint's position that Minnesota Statute §216B.50 does not apply ignores decades of precedent. Further, statutory interpretation supports the Commission's traditional interpretation that it has the authority and obligation to review mergers involving a public utility in Minnesota, even if the other party is an out-of-state entity.

The OAG noted that the Commission has explicitly considered, and rejected, CenterPoint's argument in the past. In 2000, Northern States Power Company (NSP) merged with New Century Energies (NCE) to form Xcel Energy. Like the Merger in this proceeding, NSP provided utility service in Minnesota, while NCE did not. At that time the Commission asserted jurisdiction, investigated the transaction, and imposed conditions to protect the public interest. During that proceeding, a member of the public argued that Minnesota Statute §216B.50 was limited to transactions involving two businesses operating inside Minnesota and the Commission disagreed:

The statute only requires that one of the merging public utilities be 'operating in this state.' NCE is thus prohibited from merging with or consolidating with a public utility operating in Minnesota (such as NSP) without first obtaining Commission authority. Moreover, the Commission has, on several occasions, reviewed proposed mergers or acquisitions between in-state and out-of-state utility companies under Minn. Stat. §216B.50 and the legislature has never disputed the Commission's authority to do so by amending the statute to specifically prohibit such action by the Commission.⁷

Furthermore, the Court of Appeals reviewed the NSP-NCE merger in an unpublished decision, and, even though one of the parties was an out-of-state entity, the Commission's decision to

⁷ Commission June 12, 2000 Order, Docket E, G-002/PA-99-1031, at 8.

exercise its authority was not questioned.⁸ When referring to the merger proceeding, the Court of Appeals stated, “When issuing the 2000 merger order, the Commission acted pursuant to Minnesota Statute §216B.50, subd. 1 (2000), which requires the Commission to investigate any proposed merger of regulated utilities and issue an order approving the merger if the Commission finds the merger to be ‘consistent with the public interest.’”⁹ In fact, in the decades since Minnesota Statute §216B.50 was enacted, neither the courts nor the Legislature have disturbed the Commission’s decision to review and condition mergers and consolidations.

More recently (in 2015), the Commission approved, with conditions, a merger between Integrys and Wisconsin Energy Corporation.¹⁰ That merger involved one in-state utility, Minnesota Energy Resources Corporation, owned by an out-of-state utility holding company (Integrys) which consolidated with Wisconsin Energy Corporation, another out-of-state holding company. In that proceeding, the Commission found that it had jurisdiction to consider the transaction under both Minnesota Statutes §216B.50 and §216B.48 and, to ensure that the transaction was consistent with the public interest, placed many conditions on the approval of the transaction.¹¹

Similarly, the Commission, under Minnesota Statute §216B.50, approved MDU Resources Group’s (Great Plains Natural Gas’ parent company) proposal to purchase Cascade Natural Gas Corporation.¹² Just like the Merger in this proceeding, that transaction involved the parent company (MDU Resources Group, Inc.) of an in-state utility (Great Plains) purchasing an out-of-state utility (Cascade Natural Gas). Despite the fact that Cascade Natural Gas provides service only in Washington and Oregon, and despite the fact that the transaction was styled as an acquisition rather than a merger, the Commission, to insure that it was consistent with the public interest, asserted its jurisdiction under Minnesota Statute §216B.50, investigated the transaction, and imposed conditions.

The Commission has also approved mergers under Minnesota Statute §216B.50, even when those mergers were purely internal transactions with holding companies intended to effect reorganizations. In 2008, the Commission approved Otter Tail’s request to form a holding company.¹³ At the time, Otter Tail Corporation was a Minnesota corporation with a division that provided utility service and, following a series of complex transactions, a new subsidiary called Otter Tail Power Company was formed under a corporate parent called Otter Tail Corporation. This is relevant because it demonstrates that CenterPoint’s interpretation of Minnesota Statute §216B.50 is not consistent with the historical interpretation of the law. The Commission asserted jurisdiction over the Otter Tail transactions even though the mergers in question involved only one public utility providing service in Minnesota merging with other, internal businesses that did not provide utility service in any state. Under CenterPoint’s theory,

⁸ In re. N. States Power Co., No. A06-2354, 2008 WL 131201 (Minn. Ct. App. Jan. 15, 2008).

⁹ Id. at *3 (emphasis added).

¹⁰ Docket G-011/PA-14-664.

¹¹ Commission June 25, 2015 Order, Docket G-011/PA-14-664.

¹² Docket G-004/PA-06-1585.

¹³ Commission January 7, 2009 Order, Docket E-017/PA-08-658.

the Commission would not have had authority to review and approve the transactions because none of the other parties provided utility service in the state.

The Commission recently exercised its authority to approve a similar reorganization that involved an out-of-state holding company for Great Plains Natural Gas.¹⁴ Like the Merger in this proceeding, the Great Plains transaction involved a Minnesota utility provider merging with an out-of-state entity. Great Plains was previously a division of MDU Resources Group, Inc. Following a series of complex transactions and Commission approval, Great Plains is a division of MDU Energy Capital, LLC, which is owned by MDU Resources Group, Inc. This matter is important because each transaction involved, at most, only one business that provided natural gas service in Minnesota. Under CenterPoint's new interpretation of Minnesota Statute §216B.50, none of these transactions would be subject to review by the Commission.

In 1996, CenterPoint's predecessor, Minnegasco, filed a petition requesting approval of a merger pursuant to Minnesota Statute §216B.50.¹⁵ That merger produced Reliant Energy, which ultimately became CenterPoint Energy. In that filing, Minnegasco and its parent company NorAm Energy Corp., asked the Commission to approve their merger with Houston Industries (a utility holding company), and its principal subsidiary, Houston Lighting & Power Company. Minnegasco stated that the Commission must review the transaction to determine whether it is consistent with the public interest using a net-benefit test. The Minnegasco-Houston Power & Light transaction was factually similar to the Merger proposed in this proceeding. Minnegasco was a Minnesota natural gas utility owned by a holding company that operated utilities in other states as well as Minnesota, while Houston Power & Light provided service in another state and was owned by a utility holding company that did not operate in Minnesota. In the same way, CenterPoint Energy Resources Corp., through its operating division CenterPoint Energy Minnesota Gas, provides natural gas service in Minnesota and is owned by CenterPoint HoldCo, which owns utility subsidiaries in other states, while Vectren owns several utilities in other states that do not provide utility service in Minnesota. Minnesota Statute §216B.50 applied to the Minnegasco-Houston Power & Light merger, and it should apply to the Merger in this proceeding in the same way.

The OAG pointed out that Minnesota Statute §216B.50 provides, "No public utility shall . . . merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the Commission." If, as CenterPoint contends, all of the parties to the transaction need to be providing utility service in Minnesota, then the phrase "operating in this state" would be superfluous, have no meaning and be inconsistent with the requirement that the Legislature intends for all of the parts of the statute must be effective.¹⁶ When Minnesota Statute §216B.50 is read so that all of its language is effective, the text of the statute supports the Commission's traditional interpretation, wherein only one party is required to be operating in-state, and the exercise of its authority over the Merger.

¹⁴ Docket G-004/PA-18-103.

¹⁵ Docket G-008/PA-96-950.

¹⁶ Minnesota Statute §645.17(2).

Additionally, Minnesota Statute §216B.50 should be read in the broader context of Chapter 216B which provides the Commission with broad regulatory authority to ensure that the public is provided with adequate natural gas and electric service at reasonable prices. The Commission could not reasonably accomplish these goals if it could not review and approve transactions like this Merger. For instance, if CenterPoint’s interpretation of Minnesota Statute §216B.50 were correct, the Commission would have no authority to review a transaction where an outside company took control of a Minnesota utility. Such an outcome would clearly be inconsistent with the purpose of Chapter 216B, which is why the Commission has consistently concluded that Minnesota Statute §216B.50 provides it the authority and obligation to review transactions like the Merger. The Commission’s interpretation is further supported by the requirement that the Legislature intends to favor the public interest over any private interest,¹⁷ and Minnesota Statute §645.16’s requirements.¹⁸

The OAG concluded that, while Minnesota Statute §216B.50 provides the Commission with the authority to review the Merger, and the Commission should exercise that jurisdiction, it is not the only source of authority for the Commission to review this transaction.

The OAG argued that the Commission also has jurisdiction over the Merger pursuant to Minnesota Statute §216B.48, subd. 3, which provides:

No contract or arrangement . . . providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing . . . between a public utility and any affiliated interest . . . is valid or effective unless and until the contract or arrangement has received the written approval of the commission. . . . The commission shall approve the contract or agreement . . . only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest. . . . The burden of proof to establish the reasonableness of the contract or arrangement is on the public utility.

There are many ways in which an organization can become an affiliated interest of a public utility. In particular, affiliated interests include “every corporation or person which the Commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of the public utility even though the influence is not based upon stockholding, stockholders, directors or officers”¹⁹

CenterPoint has provided sufficient information to demonstrate that Vectren, through the Merger agreement, is exercising substantial influence over its business decisions. The Merger is not merely a purchase agreement, but a major structural change that will significantly influence the HoldCo’s business operations. CenterPoint has agreed to transfer the headquarters for its natural gas business from Houston to Evansville, Indiana. In order to close the transaction,

¹⁷ Minnesota Statute §216B.01.

¹⁸ Minnesota Statute §645.17(5).

¹⁹ Minnesota Statute §216B.48, subd. 1(6).

CenterPoint will issue \$6 billion in equity and debt, agreed to take on all of Vectren's debt²⁰ and agreed that all Vectren employees who lose their jobs during the two years following the closing will receive full severance packages.²¹ Since CenterPoint, in order to acquire Vectren, has agreed to take on substantial financial obligations, the OAG concluded that Vectren exercises substantial influence over CenterPoint and is an affiliated interest. Agreements with affiliated interests, like the Merger, must be approved by the Commission.

An entity can become an affiliated interest in other ways, as well: 1) every corporation "in any chain of successive ownership of five percent or more of voting securities" is an affiliated interest; 2) every corporation "five percent or more of whose voting securities" is owned by the same person or corporation who owns "five percent or more of the voting securities" of the public utility is an affiliated interest; 3) every subsidiary of a public utility is an affiliated interest; and 4) every part of a corporation in which an operating division is a public utility.²² Even if Vectren is not an affiliated interest *now*, it will become one as soon as the Merger is executed.

Additionally, Minnesota Statute §216B.48, subd. 3 provides that, "No contract or arrangement, including any . . . *continuing arrangement*, . . . made between a public utility and any affiliated interest . . . is valid or effective unless and until the contract or arrangement has received the written approval of the commission." The terms of the Merger require CenterPoint to take up ongoing obligations such as moving its gas headquarters to Indiana, and paying severance to terminated Vectren employees for several years. These continuing arrangements must be approved by the Commission because Vectren will become an affiliated interest of CenterPoint *while the obligations are still in place*.

Additionally, the OAG stated that, the Commission may also have jurisdiction over the Merger pursuant to Minnesota Statute §216B.49, subd. 3, which provides:

It is unlawful for any public utility . . . , if organized under the laws of any other state . . . , to subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness unless the security issuance of the public utility is first approved by the Commission.

Since CenterPoint Energy Resources Corporation is organized under the laws of Delaware, CenterPoint HoldCo is incorporated in Texas, and Vectren is incorporated in Indiana, it would be unlawful for the Merger between these entities to "subject property in [Minnesota] to an encumbrance" in order to issue debt or securities. CenterPoint states that "CenterPoint HoldCo expects to issue \$2.5 billion of equity" in order to complete the Merger, which would suggest that CenterPoint HoldCo will also issue approximately \$3.5 billion in debt to gather the \$6 billion required to pay Vectren's shareholders. If the Commission finds that the following two requirements are met, it would be unlawful for the HoldCo to issue that equity or debt without Commission approval:

²⁰ <http://investors.centerpointenergy.com/static-files/344a0236-4d9a-4aeb-bf04-ec646b55d75f>.

²¹ CenterPoint Initial Comments, Attachment 2.

²² Minnesota Statute §216B.48, subd. 1.

First, the Commission would need to conclude that CenterPoint HoldCo is a public utility. Minnesota Statute §216B.02, subd. 4 provides that a “public utility” includes “corporations, or other legal entities, . . . now or hereafter . . . controlling in this state equipment or facilities for furnishing at retail natural . . . gas . . . service to or for the public . . .” CERC owns equipment or facilities in Minnesota used to furnish retail natural gas service. CenterPoint HoldCo in turn wholly owns CERC, and may therefore “control[]” CERC and all of CERC’s assets. The Commission may wish to require CenterPoint to provide additional information in this proceeding about the chain of ownership and control for CenterPoint’s natural gas assets in Minnesota in order to determine whether CenterPoint HoldCo is a “public utility” by virtue of its full ownership of CERC.

Second, the Commission would need to conclude that the debt and equity issued by the HoldCo places an encumbrance on property in Minnesota. The HoldCo wholly owns CERC, which owns all of the natural gas facilities used to provide service to customers in Minnesota. Given these relationships, it is possible that the HoldCo’s new equity or debt issuances could place encumbrances on the property or revenues of its subsidiaries. The Commission may want to request that CenterPoint provide more information about the debt and equity issuances and whether they could create encumbrances on property in Minnesota.

If the Commission finds that both of these requirements are met, then it would have jurisdiction to consider the Merger under Minnesota Statute §216B.49 because the Merger cannot be accomplished without issuance of new debt and equity to fund the transaction. If the Commission makes such a finding, it must then determine whether “the proposed security issuance is reasonable and proper and in the public interest and will not be detrimental to the interests of consumers and patrons affected thereby.”²³

Based on its analysis, the OAG concluded that, under Minnesota Statutes §216B.48, §216B.49 and §216B.50, CenterPoint needs to show that the proposed transaction is consistent with the public interest. Since CenterPoint has relied upon its position that the Commission does not have the authority to review the Merger, the OAG stated that CenterPoint should demonstrate that the Merger is consistent with the public interest in another filing, including all of the information required by Minnesota Rules parts 7825.1200–.1800, and give parties the opportunity to respond to CenterPoint’s filing. The OAG warned that, since CenterPoint intends to close on the transaction in the first quarter of 2019, there may be some need to move quickly in order for the Commission to have an opportunity to review the transaction before it is completed.

H. CenterPoint Energy – Response to OAG Reply Comments

CenterPoint addressed the OAG’s reply comments by asserting that Minnesota Statute §216B.50 does not apply, the Commission does not have approval authority under Minnesota

²³ Minnesota Statute §216B.49, subd. 4.

Statute §216B.48 and the Commission does not have the authority to review the Transaction under Minnesota Statute §216B.49.

1. Minnesota Statute §216B.50 Does Not Apply

CenterPoint stated that the OAG, despite its concern with ensuring that all portions of a statute be given meaning, ignores the statutory definition of “public utility”. The Company maintains that, since Vectren is not a Minnesota public utility, Minnesota Statute §216B.50 does not apply.

While the OAG claims “decades of precedent” supporting its argument, the OAG significantly undercuts its own claim by acknowledging that no utility has previously challenged the applicability of section 216B.50 to a transaction involving an entity that is not a Minnesota-based utility. Because no other utility has taken this position, neither the Commission nor courts have analyzed this issue. If an issue has not been analyzed in a docket, no “precedent” on that issue is created by a decision in that docket. The Company noted that Minnegasco’s 1996 petition asking for approval of the Houston Power & Light – Minnegasco merger does not bind CPE to having to seek Transaction approval in this docket.

CenterPoint stated that the OAG appears to contend that, because neither the Legislature nor the courts have stepped in to stop the Commission from asserting authority over transactions involving an out-of-state utility under Minnesota Statute §216B.50, that either or both bodies have tacitly endorsed the continued exercise of jurisdiction. CPE pointed out that, since no party has ever brought a case to the courts under section 216B.50, the courts have never had the opportunity to address its applicability.

2. Commission Does Not Have Approval Authority under Minnesota Statute §216B.48

CenterPoint argued that the existence of the Transaction Agreement does not automatically make the two parties to the agreement “affiliates” under Minnesota Statute §216B.48. If the OAG’s analysis was correct, any agreement that included provisions requiring one party to take action that might benefit the other party would be an “affiliate agreement”. CenterPoint pointed out that the OAG failed to point to a Commission or court decision that supports their theory.

While acknowledging that, post-closing, Vectren will become a CPE affiliate, CenterPoint stated that this does not mean that the Commission has approval authority over the Transaction or that the Transaction Agreement will be an affiliate agreement. If a merger or consolidation agreement was enough to provide the Commission with authority, Minnesota Statute §216B.50 would be of no import. Furthermore, the Legislature’s intent in passing section 216B.48 was to address the concern that an affiliate may receive more favorable terms from a public utility than would an unrelated party, which could harm ratepayer interests by causing the public utility to overpay for goods or services. These risks are not presented by the Transaction Agreement. Since the Transaction is between Vectren and the HoldCo and the HoldCo is not a public utility, the Transaction Agreement is not within Minnesota Statute §216B.48’s scope.

CenterPoint pointed out that the Transaction Agreement provides that the Transaction is complete at the “Effective Time”.²⁴ Vectren will not be an affiliate of any Holdco entity before the Effective Time, which is the time at which the majority of the covenants and agreements within the Transaction Agreement will terminate. Therefore, even assuming the Transaction Agreement could be characterized as an affiliate agreement once the Transaction is completed, the scope of the Commission’s authority would be limited to the few provisions that survive after the Effective Time.

3. The Commission Does Not Have the Authority to Review the Transaction under Minnesota Statute §216B.49

Even if Minnesota Statute §216B.49 were applied, it would only give the Commission approval authority over any action taken by a public utility organized under laws of another state “to subject property in [Minnesota] to an encumbrance.” With respect to the Transaction, neither CPE, CERC nor Vectren will be issuing any securities. Moreover, the HoldCo will not be taking any action that will encumber property in the State in order to fund the Transaction; therefore, Minnesota Statute §216B.49 does not apply.

I. Department of Commerce – Reply Comments

On October 2, 2018, the Department submitted reply comments. The Department did not have any recommendations for the Commission, however, the Department did provide a review and analysis of previous Commission decisions involving Minn. Stat. § 216B.50, the Restrictions on Property Transfer and Merger statute. The Department’s review focused first on cases involving the acquisition of out-of-state utilities (pp. 2-5) and second, on cases involving corporate reorganizations (on pp. 5-7). On p. 7, the Department stated its conclusion:

The Department provides the information above for the Commission to consider in this proceeding. As discussed above, numerous utilities have sought and received approval under Minn. Stat. 216B.50 for exactly this type of transaction on numerous occasions. Additionally, while this question has never been extensively litigated, the Commission has, on at least two occasions, clearly and convincingly explained that it interprets Minn. Stat. §216B.50 as applying to these transactions. Finally, based on the discussion above, it appears that, at a minimum, Minn. Stat. §216B.48 would apply to any dealings between the Company and Vectren.

J. CenterPoint Energy – Stipulation

In order to facilitate the affiliated interest agreement’s approval, CenterPoint stipulated and agreed to the following conditions related to the Transaction:

1. Transaction Costs: CPEM will not seek recovery of any Transaction Costs from Minnesota ratepayers.

²⁴ CenterPoint Initial Comments, Attachment 2, Section 9.01.

For purposes of this document, “Transaction Costs” means the costs incurred to structure, negotiate and execute the transaction, professional services fees, including investment banker fees, counsel fees, audit fees, accounting fees, and the like, and direct internal labor and external services needed to evaluate the merger, negotiate its terms, obtain regulatory approvals, obtain shareholder approvals, and execute transaction contracts.

In its next general rate case, CPEM will provide testimony and schedules, as necessary, to demonstrate that any Transaction Costs have been removed from the Base Year and that no Transaction Costs have been included in the Test Year.

2. Transition Costs: CPEM shall not recover any Transition Costs from Minnesota ratepayers without demonstrating that they are prudent and reasonable.

For purposes of this document, “Transition Costs” means costs incurred due to the Transaction other than Transaction Costs, including but not limited to:

- severance costs;
- the costs to combine, integrate, and/or align Vectren and CenterPoint following the transaction, including, but not limited to accounting and operating systems software integration costs;
- costs for moving employees (including changing headquarters);
- re-organization costs;
- bonuses or other compensation paid out as a result of the transaction;
- costs to terminate any duplicative leases, contracts, and operations; or
- financing costs to refinance existing obligations in order to achieve operational and financial synergies.

Severance costs, including severance payments related to incentive compensation plans and severance payments outside of salary or wages, related directly to Vectren’s traditional regulated utility and non-regulated operations will not be included in any CPEM cost recovery application.

In its next general rate case, CPEM shall provide testimony and schedules, as necessary, to demonstrate whether any Transition Costs have been incurred in the Base Year or are included in the Test Year, any information necessary to demonstrate that they are prudent and reasonable, and information about how CPEM determined what costs should be considered Transition Costs. Additionally, in any proceeding before the Commission in which CPEM seeks to recover transition costs that is not a general rate case, CPEM will bear the burden of proof to demonstrate that recovery of such costs is just and reasonable.

3. Acquisition Adjustment: CPEM will not seek recovery of any “acquisition adjustment” or other adjustment related to goodwill or other intangible assets, due to CenterPoint Holdco’s acquisition of Vectren.

4. Flotation Costs: To the extent that CPEM seeks recovery of flotation costs in a general rate case, CPEM will not increase the calculation of a flotation cost factor as a result of flotation costs for any equity issued to finance the Transaction.
5. Corporate Costs and Cost Allocations: In its next general rate case, CPEM will not seek to recover greater costs as a result of the Transaction for comparable corporate services than allowed in the Test Year of CPEM's most recent rate case, with "comparable corporate services" meaning those corporate services of the same type and scope. The Company may propose to include an allowance for inflation in that comparison, which the Commission may approve, deny, or modify based upon the record before it at the time.

In its next general rate case, CPEM will fully discuss any changes to its corporate cost allocations resulting from the Transaction in a manner that allows comparison with corporate cost allocations allowed in its prior rate case. Any change in corporate allocations due to the Transaction will not result in an increased allocation of corporate costs being borne by Minnesota ratepayers. To the extent the Transaction results in material changes in corporate services received by CPEM, CPEM will file a new Master Services Agreement ("MSA") prior to or as part of its next general rate case filing.

CPEM further agrees that it will not seek to recover from Minnesota ratepayers any corporate costs originally sought to be recovered from another jurisdiction but for which such recovery was denied.

For any cost allocated directly or indirectly to CPEM for which CPEM requests cost recovery, CPEM agrees to provide, in its next general rate case, testimony, schedules and workpapers providing the following information, as provided in MPUC Docket No. G-008/GR-17-285, Direct Testimony of CPEM witness Michelle Townsend, Schedule 3 Workpapers: Total Company costs, Minnesota direct cost assignments, Minnesota indirect cost assignments (including any Minnesota jurisdictional allocators), and amounts assigned directly and indirectly to each other jurisdiction (including their respective jurisdictional allocators). In addition, CPEM agrees to provide an explanation on how the Minnesota direct cost assignments and Minnesota jurisdictional allocators were determined.

Finally, in its next general rate case, CPEM will fully explain whether or not it proposes cost recovery from Minnesota ratepayers due to the creation or revaluation of any assets or liabilities on the books of any entity within CenterPoint's corporate structure due to the Transaction and, if so, the justification supporting that recovery.

6. Cost of Capital: Minnesota ratepayers will not pay an increased cost of capital due to the Transaction.

The Commission will determine the appropriate capital structure and cost of capital for ratemaking purposes in CPEM's next general rate case. CPEM acknowledges that in that rate case, it will continue to be regulated in accordance with the April 8, 2003 Order in MPUC Docket No. G-008/CI-02-1368, meaning CPEM will need to demonstrate that it:

- maintains on its Minnesota jurisdictional books and for regulatory purposes, a capital structure and applicable cost of financing typical of an A-rated utility; and
- maintains approximately a 50/50 debt equity ratio, with each debt instrument reflecting the costs associated with that of an A-rated utility at the time the debt instrument is booked.

To the extent CPEM seeks an increased cost of debt in its next general rate case, it must demonstrate that any such increase is not a result of the Transaction.

7. Net Cost Savings: The Transaction is anticipated to result in net cost savings, over time, with a goal of achieving net cost savings of two percent (2%) or more in non-fuel O&M and corporate costs allocated to Minnesota, within the first five years after close of the Transaction. In any general rate case filed during those five years, CPEM shall provide testimony regarding its efforts to achieve net cost savings and demonstrate that any net cost savings achieved in the test year have been reflected in proposed rates.
8. Service Quality: The Transaction will not adversely impact service quality for Minnesota ratepayers.

CPEM currently files service quality reports covering an array of metrics. CPEM agrees to work with DOC and OAG to identify those metrics of most significance and develop an appropriate benchmark against which to measure performance going forward (e.g. three-year or five-year average) and then provide compliance filings on an agreed upon interval to demonstrate that CPEM has maintained its current service quality levels.

9. Energy Efficiency: CPEM will continue its commitment to and pursuit of cost effective energy efficiency programs, including low-income energy efficiency programs.

The DOC will have an opportunity to review 2018 performance under the current Triennial plan and will also review the next proposed Triennial plan in 2019.

10. TIMP and DIMP reporting and metrics: In order to provide additional information on its ongoing TIMP and DIMP investments, CPEM agrees to work together with the OAG and DOC to develop metrics and reporting requirements related to safety, reliability and cost effectiveness of CPEM's TIMP and DIMP expenditures and submit a report by April 1, 2019 on the result of those discussions. The Parties agree to explore various metrics and/or reporting requirements, including but not limited to: leak rate by pipe material; causes of leaks/incidents; quantification of system risk; quantification of reduction to system risk; unit cost by pipe material; comparison of budgeted costs to actual costs; and quantification of cost savings resulting from reduced leaks.
11. Gas procurement and cost recovery filings: In its next rate case, or in its next annual fuel cost review, CPEM shall provide an explanation of: (1) how its fuel procurement strategies have changed, if at all, following the Transaction; (2) the rationale for any change or for maintaining the status quo; and (3) how CPEM's fuel procurement strategies help to minimize fuel costs for Minnesota ratepayers.

12. Continuity of current accounting practices: CPEM agrees that it will notify the Commission, DOC and OAG if it identifies any material changes in current accounting practices as a result of the Transaction, and will comply with any statutory and rule requirements regarding any such change.
13. Books and Records: CPEM will continue to provide the Commission, DOC and OAG access at its Minneapolis offices to the relevant CenterPoint Holdco, CenterPoint Energy Resources Corp. (“CERC”) and CPEM books and records, as necessary to protect CPEM ratepayers. These books and records will include all necessary information related to CPEM’s operations, including capital structure, cost of capital, financial integrity and corporate cost allocations.
14. Compliance filings on integration efforts: CPEM agrees to provide quarterly updates through 2020, and annually for an additional three years thereafter, to provide information about what steps have been taken or plans made to integrate the CenterPoint Energy and Vectren natural gas utility operations, including but not limited to: an overview and status update on integration plans and progress, a discussion of the steps taken to identify synergies or cost savings and to achieve those synergies or savings, copies of integration status updates sent to CenterPoint and Vectren employees (including officers and directors), the announcement of new officers, or other leadership changes affecting CPEM, changes to the corporate organizational structure affecting CPEM and results, findings, reports, recommendations, or conclusions produced by CenterPoint Energy and Vectren integration teams.
15. Dividend payments: CPEM agrees to make compliance filings related to dividend payments.

Within 90 days after the Transaction closes, CPEM will make a compliance filing explaining the process for dividend payments between CPEM, CERC, and CenterPoint Holdco, and any changes likely to occur as a result of the Transaction.

In its next general rate case, CPEM will provide testimony regarding any dividend payments made by CPEM since its last general rate case, including the reason for the dividends, and how they were calculated.

CenterPoint acknowledged that incorporating these commitments into a Commission Order does not constitute cost recovery pre-approval nor will it preclude the DOC or OAG from challenging cost recovery proposals. The Company stated that, for any recovery request of Transaction-related costs, CPEM will bear the burden of proof that such costs are just and reasonable.

K. Department of Commerce – Letter Response to Stipulation

The Department reviewed CenterPoint’s stipulation and concluded that it reasonably addresses the Department’s concerns about the proposed acquisition’s potential ratepayers’ impacts; therefore, the DOC recommended approval. However, the Department did not sign the stipulation.

If the Commission approves the stipulation, the Department recommended that the Commission consider the affiliated interest's merits and approve it.

L. OAG-RUD – Letter (Response to Stipulation)

The OAG stated that its primary concern was the possibility that the risks of a significant business transaction for CenterPoint HoldCo could flow down to CPEM; however, the Stipulation's conditions are intended to mitigate any potential risks and to increase the likelihood that Minnesota customers share in the proposed merger's potential cost saving benefits. However, the OAG did not sign the stipulation.

The OAG recommended that the Stipulation be approved and the Commission take no further action regarding the proposed merger. The OAG took no position on the affiliated interest agreement.

V. Staff Analysis

Since the Department and the OAG have recommended that CenterPoint's Stipulation as it related to the CenterPoint/Vectren merger be approved, it seems like their concerns regarding the Transaction's possible (negative) ratepayer impacts have been appeased; however, Staff offers the following analysis in case the Commission disagrees.

CenterPoint has stated that the cost of buying Vectren shares will cost \$6 billion and that, to pay for it, the HoldCo will use a combination of \$2.5 billion in new equity and \$3.5 billion in debt. Comments thus far have focused on the \$6 billion; however, as part of the Transaction, CenterPoint has stated that it will assume an additional \$2.5 billion in Vectren debt. Therefore, the total acquisition cost is \$8.5 billion. CenterPoint has stated that, to effect the Transaction, it has secured a \$5 billion unsecured bridge credit facility (i.e. loan) from Goldman Sachs and Morgan Stanley and a \$1.6 billion increase in its credit facility with JP Morgan.²⁵

On September 24, 2018, the HoldCo made an 8-K Filing (8-K) with the Securities and Exchange Commission (SEC)²⁶ that quantifies, on an unaudited, pro-forma basis, the Transaction's impact. Since many details regarding the transaction are unknown, Staff reviewed the 8-K and, in Tables 1 and 2, provides a brief summary of the filing's financial information.

²⁵ CenterPoint Initial Comments, Attachment 5, page 23.

²⁶ <http://investors.centerpointenergy.com/static-files/d7081875-2f20-409e-9fbb-d5f17b4a53f0>

Table 1 – CenterPoint Energy Inc., Pro-Forma Statement of Income for the Year Ended December 31, 2017 (\$, in Millions, Except Per Common Share Amounts)

	CenterPoint Energy Historical	CenterPoint Energy Post-Vectren Pro Forma
Net Income	\$1,792	\$1,893
Earnings available to common shareholders	\$1,792	\$1,791
Earnings Per Common Share (pre-merger, historical)	\$4.13	n/a
Diluted Earnings Per Common Share (post-merger, pro-forma)	n/a	\$3.58

Table 2 – CenterPoint Energy Inc., Pro-Forma Combined Balance Sheet (\$, in Millions) June 30, 2018

	CenterPoint Energy Historical	CenterPoint Energy Post-Vectren Pro Forma
Assets		
Current Assets	\$2,701	\$3,238
Property, Plant and Equipment, net	\$13,397	\$18,320
Goodwill	\$867	\$5,316
Other Assets	\$5,143	\$5,765
Total Assets	\$22,108	\$32,639
Liabilities and Shareholders' Equity		
Total Current Liabilities	\$2,842	\$5,649
Total Other Liabilities	\$6,836	\$8,592
Total Long-Term Debt, net	\$7,760	\$10,751
Total Shareholders' Equity	\$4,670	\$7,647
Total Liabilities and Shareholders' Equity	\$22,108	\$32,639
Shareholders' Equity %	21.12%	23.43%

The first table reveals that while net income will increase, the earnings available to common shareholders will be flat and the diluted earnings per common share (EPS) will actually *decrease* by \$0.55, or 13.3%. From a theoretical investment perspective, an EPS decrease makes the stock less attractive which, in turn, in theory, with everything else held equal, would require a higher premium (or dividend) to attract investors.

The second table shows that assets would increase by \$10.5 billion²⁷ and shareholders' equity would increase almost \$3 billion²⁸ - thereby increasing the shareholders' equity from 21.12% to 23.43%. While at first glance there seems to be an improvement in shareholders' equity, a closer look reveals that total assets and shareholders' equity are inflated by the \$4.449 billion²⁹ increase in Goodwill. Goodwill is an intangible asset that records the difference between the transaction cost and the underlying assets being acquired. Although the recording of Goodwill is compliant with Generally Accepted Accounting Principles (GAAP), from an economic perspective, one could consider Goodwill a sunk cost. If one were to write-off the Goodwill amount, the offsetting entry would be to equity which, as shown in Table 3, would result in a significant reduction to equity – both in dollars and in percent. As in the case of lower EPS, as shareholders' equity decreases, the premium a prospective investor will require increases.

Table 3 – CenterPoint Energy Inc., Pro-Forma Combined Balance Sheet, Minus Vectren Goodwill (\$ In Millions)

	CenterPoint Energy Historical	CenterPoint Energy Post-Vectren Pro Forma
Assets		
Current Assets	\$2,701	\$3,238
Property, Plant and Equipment, net	\$13,397	\$18,320
Goodwill	\$867	\$867
Other Assets	\$5,143	\$5,765
Total Assets	\$22,108	\$28,190
Liabilities and Shareholders' Equity		
Total Current Liabilities	\$2,842	\$5,649
Total Other Liabilities	\$6,836	\$8,592
Total Long-Term Debt, net	\$7,760	\$10,751
Total Shareholders' Equity	\$4,670	\$3,198
Total Liabilities and Shareholders' Equity	\$22,108	\$28,190
Shareholders' Equity %	21.12%	11.34%

Given the Commission's recent concerns in CPE's 2015 rate case, in docket 17-285, regarding CPE's *hypothetical* capital structure and how it compares to the HoldCo's capital structure, concerns regarding this Transaction's impact on the HoldCo's credit ratings and its related impact to Minnesota ratepayers seem to be well founded. If the Commission asserts jurisdiction under Minnesota Statutes §216B.48, §216B.49 and/or §216B.50 then, as part of the Company's Transaction-related filing, the Commission may want to require CenterPoint to address the Transaction's possible credit rating impact.

²⁷ \$32.6 billion minus \$22.1 billion.

²⁸ \$7.647 billion minus \$4.670 billion.

²⁹ \$5.316 billion minus \$0.867 billion.

The Commission may also want to ask CPE to address whether any of these new (yet-to-be-issued) securities (of all varieties including the upsized credit facilities) obligate or generally encumber CPE in any way, either directly or indirectly, through its parent company's obligation to service or retire these new securities. If they do, this could also have an impact on the Company's credit rating and could trigger a requirement that the issuance of these securities receive Commission approval.

Although the OAG has recommended that the Commission assert jurisdiction and order the Company to make the Transaction-related filing, the OAG did not recommend a timeline for such filing. Therefore, if the Commission asserts jurisdiction, it may want to establish a filing deadline. Staff proposes 30 days; however, the Commission may want to confirm with the Company and parties whether such a timeline is reasonable.

In the initial comments, the Department suggested that the Commission may want to refer this matter, as it relates to the Transaction, to the Office of Administrative Hearings (presumably for a contested hearing). Should the Commission take this path then, as is generally done in rate cases, the Commission may want to request that ALJ's Report be filed within a specific time period. Staff proposes three months; however, coordination with the Office of Administrative Hearings will be required to insure that such a timeline is realistic.

Most of the record in this proceeding focused on whether the Commission can or should assert jurisdiction over the Transaction. Another possible action could be for the Commission to assert jurisdiction but choose to not exercise it. Although Staff offers this as a possible alternative, Staff would not support it.

VI. Decision Alternatives

Stipulation to CPE/Vectren Merger Transaction

1. Approve the CenterPoint Stipulation and incorporate the stipulated terms and conditions of the agreement into the Commission's Order in this docket. (CPE, DOC, OAG)
2. Take no action.

CPE/Minnesota Limited Affiliated Interest Agreement

3. Approve the CenterPoint/Minnesota Limited affiliated interest agreement. (CPE, DOC)
4. Take no action.

CPE/Vectren Merger Transaction

If the Commission finds that the CenterPoint Stipulation does not address its concerns about the CPE/Vectren merger transaction, it may want to consider the following decision alternatives.

5. Find that Minnesota Statute §216B.50 applies and order that all Transaction-related documents as well as all transaction-related and specific information be filed. (DOC initial position, OAG initial position)
6. Find that Minnesota Statutes §216B.48 and §216B.49 also apply and order that all Transaction-related documents as well as all transaction-related and specific information be filed. (DOC initial position, OAG initial position)
7. If the Commission finds that Minnesota Statutes §216B.48, §216B.49 and/or §216B.50 apply, then order that the Transaction-related documents and all transaction-related and specific information be filed within thirty days of the Commission's Order. (Staff)
8. Make no finding on whether Minnesota Statutes §216B.48, §216B.49 and/or §216B.50 apply but require that all Transaction-related documents and all transaction-related and specific information be filed in this docket within thirty days of the Commission's Order.
9. Find that Minnesota Statutes §216B.48, §216B.49 and/or §216B.50 do not apply and request parties to evaluate the Affiliated Interest petition on its stand-alone merits. (CPE)
10. Find that Minnesota Statute §216B.50 does not apply and direct that all Transaction-related impacts be addressed in the Company's next rate case and, as they come up, in other relevant dockets. (DOC preliminary alternative)
11. Find that Minnesota Statute §216B.50 applies; however, do not to assert jurisdiction at this time and direct parties to evaluate the Affiliated Interest petition on its stand-alone merits.
12. Find that Minnesota Statute §216B.50 applies; however, do not assert jurisdiction at this time and direct that all Transaction-related impacts be addressed in the Company's next rate case and, as they come up, in other relevant dockets.
13. Order CenterPoint to provide more information, within thirty days of the Commission's Order, about the debt and equity issuances and whether they could create encumbrances on property in Minnesota. (OAG preliminary alternative)

14. Open an investigation in a new docket or as a continuation of this docket that addresses ratepayer impacts brought about by the Transaction's organizational and operational changes. (DOC preliminary alternative)

If further investigation is required,

- a. Direct Commission staff to issue a notice requesting comments. Delegate authority to the Commission's Executive Secretary to approve notices and vary timelines for the duration of this proceeding.

Or

- b. Refer this matter to the Office of Administrative Hearings for a Contested Case Proceeding and request that the ALJ's report be filed within three months (or some other period of time).

15. Take no action.