
**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East
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St. Paul, Minnesota 55101-2147**

**MPUC Docket No. G-004/GR-19-511
OAH Docket No. 65-2500-36528**

*In the Matter of a Petition by Great Plains Natural Gas Co.,
a Division of Montana-Dakota Utilities Co.,
for Authority to Increase Natural Gas Rates in Minnesota*

**REPLY BRIEF
OF THE OFFICE OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION**

April 24, 2020

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**STATE OF MINNESOTA
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FOR THE
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REPLY BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (“OAG”) respectfully submits its reply brief contesting Great Plains Natural Gas Company’s (“Great Plains” or “the Company”) request to increase rates for natural gas service. The OAG will not address every issue raised in testimony in this reply; rather, the OAG will respond to those issues raised by other parties in their initial briefs that require an OAG response. The fact that the OAG does not respond to a particular argument in this reply does not indicate concurrence or waiver by the OAG of a position taken in testimony or briefing.

I. THE COMMISSION SHOULD DISALLOW DUES FOR THE EDISON ELECTRIC INSTITUTE AND THE MINNESOTA UTILITY INVESTORS, INC.

The Administrative Law Judge (“ALJ”) and the Minnesota Public Utilities Commission (“Commission”) should reduce Great Plains’ test-year expenses by \$11,964 to disallow recovery of membership dues for the Edison Electric Institute (“EEI”) and the Minnesota Utility Investors, Inc. (“MUI”) for the simple reason that the Company has not proven that membership in these organizations is reasonable and necessary for the provision of utility service. In its initial brief, Great Plains merely repeats the same two arguments that it has made previously; namely, that dues paid to EEI were actually for EEI’s affiliate, the Utility Solid Waste Activities Group

(“USWAG”), and that recovery of dues paid to MUI is appropriate because membership benefits the Company’s customers.¹

Great Plains has not met its burden to show that membership in these organizations is reasonable and necessary for the provision of natural gas utility service, as the law requires.² For EEI, the Company’s direct testimony focused solely on championing the benefits that EEI provides to *electric* customers.³ It was not until rebuttal testimony, when the OAG’s opportunity to conduct due diligence and test the veracity of Great Plains’ assertions had passed, that the Company raised the possibility that EEI membership dues were being paid to USWAG.⁴

Even assuming the dues paid by Great Plains were for USWAG, the Company has not provided even a modicum of evidence to substantiate: (1) the types of solid and hazardous waste issues the organization addresses;⁵ (2) the “number of ways” that the Company utilizes the organization “specifically for its natural gas operations;”⁶ or (3) the Company’s claim that USWAG “clearly benefits customers.”⁷ Instead, the Company offers a mere conclusory statement that it has resolved the OAG’s concern about natural gas customers paying dues to an electric organization,⁸ and assumes its assertion to be proved.

Moreover, Great Plains’ initial brief attempts to flip the burden of proof on its head. Specifically, the Company argues that EEI dues should be allowed because “[t]here is simply nothing in the record that supports denial of recovery.”⁹ That is not the applicable standard. Recovery is not presumed. Rather, Great Plains must prove by a preponderance of the evidence

¹ See Great Plains Initial Brief at 31–32.

² See Minn. Stat. § 216B.16, subd. 17(a).

³ OAG Initial Brief at 5; Ex. GP-21 sched. TRJ-1 at 2 (Jacobson Direct).

⁴ OAG Initial Brief at 5–6; Ex. GP-23 at 3 (Jacobson Rebuttal).

⁵ See Great Plains Initial Brief at 32.

⁶ *Id.*

⁷ *Id.*

⁸ See *id.* (“With respect to EEI dues of \$464, Great Plains addressed OAG[’s] concern that payment of dues to an organization ostensibly for electric utilities benefits Great Plains natural gas customers.”).

⁹ *Id.*

that recovery should be granted.¹⁰ Great Plains' effort to burden-shift is nothing more than an unsuccessful diversion that must fail. There is nothing in the record that supports a grant of recovery because the Company failed to satisfy its burden of proof.

Great Plains similarly fails to meet its burden of proof to show that membership in MUI is reasonable and necessary for the provision of utility service.¹¹ In its initial brief, the Company tries to distract from the organization's purpose, and its own lack of substantiating evidence, by restating its argument that "MUI focuses on legislation and regulatory policy that affects utilities and, directly and indirectly, affects utility customers."¹² The OAG does not dispute that MUI affects utility customers; however, it affects them in ways that are undesirable and adverse to their own interests.¹³

Great Plains next argues that, by removing lobbying-related dues, the Company has already accounted for MUI's "other activities that are arguably focused on shareholders."¹⁴ When it comes to MUI, there are no "other activities" that are "arguably focused on utility shareholders;"¹⁵ there are *only* activities that are focused on shareholders. MUI is an organization devoted to representing the interests of shareholders that exists exclusively to enhance the voice and impact of investors in the development of federal, regional, and state legislative and regulatory policy.¹⁶ Arguing that MUI benefits ratepayers in any way is erroneous. One need only examine the organization's general mission statement¹⁷ and its

¹⁰ *In re N. States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987).

¹¹ See Minn. Stat. § 216B.16, subd. 17(a).

¹² Great Plains Initial Brief at 31.

¹³ See OAG Initial Brief at 8 ("As succinctly stated in Mr. Lebens' surrebuttal testimony, the only impact MUI has on utility customers is higher prices, which come by way of increased rate-case expense requests as they have here."); Ex. OAG-2 at 9 (Lebens Surrebuttal) (referring to the higher prices to customers for advocacy that runs counter to their own interests).

¹⁴ Great Plains Initial Brief at 31.

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.*; see also Ex. GP-21 sched. TRJ-1 at 3 (Jacobson Direct).

¹⁷ OAG Initial Brief at 7; see also Ex. GP-21 sched. TRJ-1 at 3 (Jacobson Direct).

banner,¹⁸ to know that MUI advocates for utility *investors*, not utility *customers*. Great Plains has not met its burden of proof by merely repeating MUI's mission statement; in fact, if anything, it has reinforced that organization's role, which is as a strident advocate for utilities and their shareholders. As with EEI, Great Plains simply asserts that recovery of dues is warranted without providing any actual evidence of ratepayer benefit.

The Company bears the burden to show that membership dues are reasonable and necessary for the provision of utility service.¹⁹ This means proving that any benefits from the organization flow to ratepayers, not just shareholders;²⁰ that there is a connection between the expense ratepayers are asked to pay and reliable utility service;²¹ and, most importantly, that it is just and reasonable for ratepayers to bear the cost of those dues.²² Great Plains has offered scant evidence as to why recovery of EEI and MUI dues, in any amount, would be just and reasonable. For that reason, and because any doubt as to reasonableness is to be resolved in favor of the ratepayer,²³ the ALJ and the Commission should disallow expenses of \$11,964 for the EEI and MUI dues.

II. THE COMMISSION SHOULD MAINTAIN THE EXISTING RESIDENTIAL AND SMALL-BUSINESS CUSTOMER CHARGES.

The OAG's initial brief demonstrated that retaining the existing residential and small-business customer charges is just and reasonable because it would increase conservation, maximize customers' control over their bills, and preserve their ability to pay.²⁴ Great Plains and the Department argue that these charges must be raised to move them toward the theoretical cost of connecting a residential or small-business customer to the distribution system. But this

¹⁸ OAG Initial Brief at 7–8; *see also* Ex. OAG-2 at 9 (Lebens Surrebuttal).

¹⁹ *See* Minn. Stat. § 216B.16, subd. 4; *see also* Minn. Stat. § 216B.03.

²⁰ OAG Initial Brief at 8 (quoting the Commission's Statement of Policy on Organization Dues).

²¹ *Id.*

²² *Id.*

²³ *See* Minn. Stat. § 216B.03.

²⁴ *See* OAG Initial Brief at 13–17.

argument ignores that rate design is not an abstract economic exercise²⁵ and that the Commission routinely sets customer charges well below “cost.”²⁶ Simply put, neither party can explain why one factor—the theoretical “customer cost” spit out by an economic model—outweighs the multiple factors that support maintaining the current charges.

Great Plains argues that the OAG “fails to adequately recognize that intra-class rate design is a zero sum game.”²⁷ The OAG recognizes that any increase to a class’s revenue requirement is split between the customer charge and the volumetric charge. This is the precise reason that lower customer charges encourage conservation: If Great Plains’ rate hike is granted, maintaining the existing customer charge will necessarily result in a higher volumetric charge, providing customers a greater incentive to conserve energy.

The Department conceded that maintaining the residential customer charge would encourage conservation, to the tune of 0.67 percent, but characterizes this impact as “marginal.”²⁸ If the Department is arguing that this incremental increase in energy conservation is not worth pursuing, the OAG respectfully disagrees. Minnesota law encourages utilities to pursue energy savings of 1.5 percent annually, and utilities expend substantial sums to achieve incremental energy savings through conservation-improvement programs.²⁹ Simply by maintaining the existing residential customer charge, Great Plains could make significant

²⁵ Ex. OAG-4 at 57 (NARUC Manual).

²⁶ Compare Docket No. G-004/GR-15-879, Direct Testimony of Heinen at 46 (Feb. 23, 2016) (listing residential customer cost estimated by Great Plains as \$23) with Order Approving Final Revenue Apportionment and Rate Design at 5 (Dec. 22, 2016) (setting residential customer charge at \$7.50); see also Ex. GP-26 at 8 (Hatzebuhler Rebuttal) (listing other Minnesota natural gas utilities’ residential customer charges, all of which are less than \$10).

²⁷ Great Plains Initial Brief at 39.

²⁸ Department Initial Brief at 103.

²⁹ See Ex. DER-5 at 11 (Davis Direct) (citing Minn. Stat. § 216B.241, subd. 1c(b)); see also Minn. Stat. § 216B.2401 (finding that “cost-effective energy savings are preferred over all other energy resources” and providing that “it is the energy policy of the state of Minnesota to achieve annual energy savings equal to at least 1.5 percent of annual retail energy sales of electricity and natural gas through cost-effective energy conservation improvement programs and rate design,” among other means). Section 216B.241, subd. 1c, allows the Department to set utility-specific energy-saving goals, and it has set Great Plains’ goal at 1.03 percent. See Docket No. G-004/CIP-16-121, Department Decision at 7 (Nov. 26, 2019).

progress toward its energy-savings goal without using costly conservation-improvement measures for which ratepayers must foot the bill.³⁰

In sum, “moving toward cost” is not a sufficient reason to increase the residential or small-business customer charge in this case. Keeping these charges at their current levels would encourage more conservation than any other rate-design proposal in the record. It would also help customers afford their lives by maximizing their ability to control costs through reduced energy usage. For the foregoing reasons, the Commission should adopt the OAG’s rate-design recommendation as the most just, reasonable, and pro-consumer option in this case.

³⁰ See Ex. OAG-2 at 5 (Lebens Surrebuttal) (concluding that 0.67 percent energy conservation is significant, especially when achieved through rate design alone).

CONCLUSION

For the reasons set forth in this reply brief and in the OAG’s initial brief, the OAG respectfully requests that the ALJ and the Commission adopt the recommendations of the OAG in order to protect the interests of ratepayers.

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Respectfully submitted,

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