OAH 8-2500-36579
PUC G-008/GR-19-524

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application by CenterPoint Energy Resources Corporation d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Gas Rates in Minnesota

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION TO APPROVE THE PARTIES' SETTLEMENTS

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on September 9, 2020. The hearing record closed following the receipt of the parties' final briefs on October 23, 2020.

Eric G. Swanson, Elizabeth H. Schmiesing, and Joseph M. Windler, Winthrop & Weinstine, P.A., appeared on behalf of the Applicant CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas (Applicant, the Company or CPE).

Amelia J. Vohs, appeared on behalf of the Minnesota Center for Environmental Advocacy, Fresh Energy, and the Sierra Club, proceeding jointly as the Clean Energy Organizations (the CEOs).

James M. Strommen and Joseph L. Sathe, Kennedy & Graven, Chartered, appeared on behalf of the Suburban Rate Authority (SRA).

Jocelyn E. Bremer, Assistant City Attorney, appeared on behalf of the City of Minneapolis (City).

Peter G. Scholtz and Max H. Kieley, Assistant Attorneys General, appeared on behalf of the Office of the Attorney General – Residential Utilities Division (OAG).

Richard E. B. Dornfeld, Cha Xiong, and Katherine M. Hinderlie, Assistant Attorneys General, appeared on behalf of the Minnesota Department of Commerce, Division of Energy Resources (DER).

Jorge R. Alonso, Andrew P. Bahn, Jason Bonnett, Robert C. Harding, and Raymond S. Hetherington, Jr., appeared on behalf of the staff of the Public Utilities Commission.

STATEMENT OF ISSUES

In its Notice and Order for Hearing, the Commission requested parties to address the following issues over the course of this proceeding:

1. Is the test year revenue increase sought by the Company reasonable or will it result in excessive earnings?

2. Are the Company's proposed capital structure and return on equity reasonable?

3. Is the rate design proposed by the Company reasonable?

4. Does the base cost of gas, proposed in Docket No. G-008/MR-19-525, need to be updated?

5. Were all costs related to the 2018 and 2019 Metro Beltline Replacement Project construction services contract prudently incurred?

6. Which costs associated with Metro Beltline Replacement Project construction services contract are eligible for recovery?

7. Is the proposed hypothetical capital structure reasonable or should alternative capital structure or other ratepayer protection mechanisms be adopted?

8. Do the changes recorded in the following accounts and expense items reflect reasonable practices:

   (a) 100% reduction in Gas Storage Maps & Recs (FERC Account 8150):

   (b) 150% reduction in Compressor Station Expense (FERC Account 8180);

   (c) 92% reduction in Ops Fuel (FERC Account 8421);

   (d) $1.6 million increase in Oper Superv & Engine (FERC Account 8701);

   (e) $2.1 million increase in Mains & Services (FERC Account 8740);

   (f) $1.6 million increase in Customer Install Expense (FERC Account 8790);

   (g) Ales Expense 63% decrease;

   (h) Administrative & General Expense $5.96 million (20%) increase;

(i) Maintenance Expense $3.93 million (15.7%) increase; and

(j) 100% reduction in Gas Storage Maps & Recs (FERC Account 8150)?

9. What interest rate should be applied to any prospective interim rate refunds?

10. Were the original and subsequent costs of construction for the Shakopee regulator station prudently incurred?

11. Is CenterPoint Energy's billing system adequate and accurate?

12. Were the costs associated with operating the customer billing system prudently incurred?

13. Did CenterPoint Energy appropriately apply customer bill payments for regulated and non-regulated services that appear on the same customer bill?

FINDINGS OF FACT

I. The Parties Resolved the Key Issues in this Matter Through a Combination of a Facilitated Mediation and Separate Negotiations

1. On August 21 and August 24, 2020, the parties engaged in mediation of the matters in dispute with Administrative Law Judge Ann C. O'Reilly.[1]

2. With respect to all but one issue, the parties reached agreement on all of the matters in dispute.[2] The only remaining issue was the scope and reach of the proposed Tariff-on-Bill (TOB) program proposed by the City.

3. Shortly thereafter, on September 2, 2020, CPE and the City agreed to a stipulated settlement of their disputes on the proposed TOB program (Settlement).[3]

4. On September 17, 2020, CPE filed the terms of the Settlement with the Administrative Law Judge.[4] The features of that Settlement and the agreement on the TOB pilot project, are assessed in the findings below.

[1] The Settlement, at 2 (September 17, 2020) (eDocket No. 20209-166661-01) (Settlement).
[2] *Id.* at 1. *See also* eDocket Nos. 20209-166661-02 and 20209-166661-03.
[3] Exhibit (Ex.) COM 3.
[4] *See* eDocket Nos. 20209-166661-01, 20209-166661-02 and 20209-166661-03.

II. The Parties

5. CenterPoint Energy, Inc. is a public company that operates a number of subsidiaries made up of various business units. One of the units is CenterPoint Energy Resources Corp (CERC). CERC's operating units include CenterPoint Energy Gas Operations, which includes the Company (CenterPoint Energy Minnesota Gas).[5]

6. The CEOs are a consortium comprised of Fresh Energy, Sierra Club, and the Minnesota Center for Environmental Advocacy (MCEA). Each is a non-profit policy organization that advocates for greater use of clean energy technologies and integrating these technologies into our economy. Many of the members of the CEOs are CPE ratepayers.[6]

7. The SRA is a municipal joint powers association. Most of the organization's members are municipalities in the suburban Twin Cities area that receive natural gas service from CPE. The SRA acts on behalf of its members and their residential and business customers within member communities.[7]

8. The City is a home-rule charter city organized under Article XII of the Minnesota Constitution and Chapter 410 of Minnesota Statues. The Company is the exclusive natural gas provider in Minneapolis. The City and its residents represent one of the Company's largest customer bases.[8]

9. The OAG advocates on behalf of residential and small business utility ratepayers.[9]

10. When intervening in gas or electric hearings, the DER must "prepare and defend testimony designed to encourage" a "project that results in energy efficiency or energy conservation."[10]

III. Procedural Background

11. CPE initiated this proceeding on October 28, 2019, by filing its Application for Authority to Increase Rates (Application). In that filing, CPE sought the authority to raise its rates, so as to increase its revenues by $62.032 million (an amount equal to 6.8 percent annually).[11]

12. On October 31, 2019, the Commission issued a Notice of Comment Period on Completeness and Procedures.[12]

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[5] Ex. CPE- 32 at 1-3 (Townsend Direct).
[6] Petition to Intervene of Fresh Energy, Sierra Club and Minnesota Center for Environmental Advocacy (Jan. 26, 2020) (eDocket No. 20201-158821-01).
[7] Petition to Intervene of the Suburban Rate Authority (Jan. 7, 2020) (eDocket No. 20201-158878-01).
[8] Petition to Intervene of the City of Minneapolis (June 15, 2020) (eDocket No. 20206-163968-01).
[9] Minn. Stat. § 8.33, subds. 2, 3 (2020).
[10] Minn. Stat. §§ 216A.07, subd. 3, 216B.241, subd. 1(e) (2020).
[11] Notice and Order for Hearing at 1 (Dec. 18, 2019) (eDocket No. 201912-159451-01).
[12] *Id*.

13. The DER filed comments on November 7, 2019, concluding that the Company's Application complied with the filing requirements and recommending that the Commission refer the matter for contested case proceedings.[13]

14. On December 18, 2019, the Commission issued a series of three orders:

(a) A Notice and Order for Hearing that, among other matters, referred this case to the Office of Administrative Hearings for contested case proceedings;

(b) An order that accepted the Company's rate case filing as substantially complete, suspended the Company's proposed rates, and extended the timeline for a final determination of rates; and

(c) An order that established interim rates.[14]

15. On December 18, 2019, the OAG filed a petition to intervene in this matter.[15]

16. On January 6, 2020, the CEOs petitioned to intervene in this matter.[16]

17. On January 7, 2020, the SRA petitioned to intervene in this matter.[17]

18. A prehearing conference was held on January 14, 2020, to discuss scheduling-related matters with counsel for CPE, SRA, the CEOs, OAG and DER, and the Commission Staff.[18]

19. On January 28, 2020, the Administrative Law Judge issued the First Prehearing Order. This Order set forth the procedures for discovery and hearing preparation, and a schedule for later proceedings. It also granted the intervention requests of the CEOs, SRA and the OAG.[19]

20. On June 15, 2020, the City petitioned to intervene. By way of a Fourth Prehearing Order, the City's intervention request was granted.[20]

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[13] *Id*.
[14] *Id*; Order Accepting Filing, Suspending Rates, and Extending Timeline (Dec. 18, 2019) (eDocket No. 201912- 158450-01); Order Setting Interim Rates (Dec. 18, 2019) (eDocket No. 201912-158452-01).
[15] Petition to Intervene by the Office of the Attorney General (December 19, 2019) (eDocket No. 201912-158473-02).
[16] Petition to Intervene of Fresh Energy, Sierra Club, and Minnesota Center for Environmental Advocacy (January 6, 2020) (eDocket No. 20201-158821-01).
[17] Suburban Rate Authority Petition to Intervene (January 7, 2020) (eDocket No. 20201-158878-01).
[18] *See* First Prehearing Order (Jan. 28, 2020) (eDocket No. 20201-159713-01).
[19] First Prehearing Order (Jan. 28, 2020) (eDocket No. 20201-159713-01). *See also* Petition to Intervene of the Suburban Rate Authority (Jan. 7, 2020) (eDocket No. 20201-158878-01); Petition to Intervene of Fresh Energy, Sierra Club and Minnesota Center for Environmental Advocacy (Jan. 26, 2020) (eDocket No. 20201-158821-01).
[20] Petition to Intervene of the City of Minneapolis (June 15, 2020) (eDocket No. 20206-163968-01); Fourth Prehearing Order at 2 (June 25, 2020) (eDocket No. 20206-164249-01).

21. On July 15, 2020, the CEOs, the City, the OAG and the DER filed their direct testimony.[21]

22. On July 28, 29 and 30, 2020, public hearings were held by way of an interactive telephone and internet connection on the WebEx platform. Public hearings were held at 1:00 p.m. and 6:00 p.m. on July 28; at 5:00 p.m. on July 29; and at 6:00 p.m. on July 30, 2020.[22]

23. At the beginning of each of the public hearings, representatives of the parties and the Commission staff made brief introductory remarks and were available throughout the hearing to answer questions. A total of 12 members of the public spoke during the public hearings and offered comments or questions.[23]

24. In general, the commentators opposed the rate increase request, noting that it was burdensome to ratepayers in the wake of the job losses and business closures caused by the COVID-19 pandemic. The remarks of Peter Wessendorf were emblematic of the view expressed by many of his fellow commentators:

> I am sympathetic to CenterPoint's needs for additional funding to help maintain its facilities. I do not, on paper, oppose its desire to get a little more money for the system so that it can reasonably maintain a profit. That is fine with me; however, we are not in normal circumstances, and they need to respect that. If all the normal people of the city, all the residents, we're all feeling the pinch of COVID, of the unrest, CenterPoint should have to shoulder some of that burden as well.[24]

25. At the close of the July 30, 2020, public hearing, and after all others who sought recognition had been heard, the Administrative Law Judge granted 90 minutes of public hearing time to the Sierra Club and Community Power. These organizations had earlier requested an opportunity to present, for the hearing record, a series of pre-recorded videos in lieu of live public testimony. The Sierra Club and Community Power expressed concern that the timing, format, and requirements of the public hearing process presented barriers to the receipt of comments from some stakeholders.[25]

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[21] *See* eDocket Nos. 20207-164954-01, 20207-164955-01, 20207-164957-01, 20207-164957-02, 20207-164957-03, 20207-164957-04, 20207-164957-05, 20207-164957-06, 20207-164957-07, 20207-164957-08, 20207-164957-09, 20207-164960-01, 20207-164960-02, 20207-164965-01, 20207-164965-02, 20207-164965-03, 20207-164975-01, 20207-164975-02, 20207-164975-03, 20207-164978-02, 20207-164978-03.

[22] See Public Hearing Transcripts (Pub Tr.) (eDockets 20208-166275-01, 20208-166275-02, 20208-166275-03, 20208-166275-04).

[23] *See id*.

[24] Pub. Tr. at 31 (Afternoon Hearing, July 28, 2020) (Wessendorf) (eDocket No. 20208-166275-01).

[25] *See* Pub. Tr. at 12-13, 45-47, 64, 108 (Evening Hearing, July 30, 2020) (eDocket No. 20208-166275-04).

26. The receipt of pre-recorded comments – roughly three minutes each – permitted participation by a wider range of community members.[26]

27. Additionally, Community Power hosted its own webpage where interested persons could upload their video comments to be made part of the hearing record. In total, 72 such video comments were submitted; many, but not all of which, were played during the 90-minute segment set aside for the Sierra Club and Community Power.[27]

28. Each of the video commentators urged adoption of the City's TOB proposal, and most opposed both the proposed rate increase and any increase in the Basic Charge for service. The remarks of Delaney Russell were representative of the view expressed by many of her fellow commentators:

> First, I ask you to deny the rate increase, in particular the 26 percent fixed fee increase. I'm appalled that a public utility is asking for this kind of increase during the pandemic. Increasing Minnesotans' energy bills will contribute to greater economic destabilization and is not in the public interest. Families and businesses are having to tighten their belts significantly and CenterPoint should be no exception.
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> ...
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> I'm also asking you to approve the Minneapolis inclusive financing pilot. In Minnesota's Next Generation Energy Act of 2007, we're supposed to reduce our greenhouse gas emissions by 30 percent by 2025 and 80 percent by 2050. We need to put policies and initiatives in place that will support these goals. That's not happening yet. Right now, only homeowners with a financial cushion can invest in energy efficiency improvements or clean energy like solar. If we're to meet the state's goals, we need to enable more and more people to make these important investments even if they don't have the up-front cash or good credit or if they're renters. We need to make it possible for every single person who wishes it to have the ability to invest in energy efficiency upgrades including weatherization or switching to clean energy.[28]

29. The number of commentators participating in the public hearings in this case was substantially greater than had participated in CPE's last two rate cases combined.[29]

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[26] *See id.* at 45 – 108.
[27] *Id.* at 46-47, 66, 108; *see also* https://tinyurl.com/19-524comments (last accessed November 12, 2020).
[28] Pub. Tr. at 67-69 (Evening Hearing, July 30, 2020) (eDocket No. 20208-166275-04).
[29] *Compare id.* at 4-5 with Public Hearing Transcripts, GR-17-285 (January 16, 17, 18, 24, 2018) (eDocket No. 20183-140719-01), Public Hearing Transcripts, GR-15-424 (December 2, 3, 8, 2015) (eDocket Nos. 20161-116976-01, 20161-116976-02, 20161-116976-03, 20161-116976-04).

30. Setting aside some hearing time for the receipt of pre-recorded comments after testimony from all other attendees had been heard, and establishing a repository for the receipt of still other pre-recorded comments, were important innovations in the hearing process. It reflected the key purposes of the Administrative Procedure Act: This approach increased public accountability of the Commission's ratemaking decisions; ensured a uniform minimum procedure; increased public access to governmental information; increased the perceived fairness of the contested case proceedings; increased the access and availability of the hearing record; and struck a fair balance between the use of newer technologies with the need for efficient, economical, and effective hearing practice.[30]

31. On August 12, 2020, the Company, DER and CEOs filed rebuttal testimony.[31]

32. On August 21 and August 24, 2020, the parties engaged in mediation with Administrative Law Judge Ann C. O'Reilly. On August 27, 2020, the parties notified the undersigned Administrative Law Judge that they had reached a Settlement on all contested issues in the proceeding with the exception of the TOB program proposed by the City.[32]

33. On September 1, 2020, the undersigned Administrative Law Judge issued a Seventh Prehearing Order. The Order extended the time to file surrebuttal testimony to September 2, 2020, and adjusted the start time of the evidentiary hearing. Following the settlement accord, the key purposes of an evidentiary hearing were to receive previously eFiled items into the hearing record and to obtain additional testimony on the TOB issue.[33]

34. On September 2, 2020, the City filed a Stipulation between it and the Company. The Stipulation resolved the dispute over the TOB program design and memorialized the agreement between CPE and the City as to the features of an appropriate pilot project.[34]

35. As a result of the Stipulation, neither the Company nor City filed surrebuttal testimony.[35]

36. On September 9, 2020, the evidentiary hearing was held by way of the Microsoft Teams video conferencing platform. During the hearing, the parties' hearing

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[30] *See* Minn. Stat. § 14.001(2), (3), (4), (6), (7) (2020).

[31] *See* eDocket Nos. 20208-165797-02, 20208-165797-03, 20208-165797-04, 20208-165797-05, 20208-165797-06, 20208-165803-01, 20208-165824-02, 20208-165824-03, 20208-165824-04, 20208-165824-05, 20208-165824-06, 20208-165824-07, 20208-165824-08, 20208-165824-09, 20208-165824-10, 20208-165825-01, 20208-165825-02, 20208-165825-03, 20208-165825-04, 20208-165825-05, 20208-165825-06, 20208-165825-07, 20208-165825-08, 20208-165825-09, 20208-165825-10, 20208-165826-01, 20208-165812-01, 20208-165812-02, 20208-165951-02.

[32] Correspondence to Judge Lipman (Aug. 27, 2020) (eDocket No. 20208-166236-01).

[33] Seventh Prehearing Order (Sept. 1, 2020) (eDocket No. 20209-166345-01).

[34] Stipulation between CenterPoint Energy Minnesota Gas and City of Minneapolis (Sept. 2, 2020) (eDocket No. 20209-166387-02).

[35] Correspondence to Judge Lipman (Sept. 2, 2020) (eDocket No. 20209-166387-01).

exhibits, consisting of direct and rebuttal testimony, work papers, attachments, appendices, schedules, and other supporting materials, were received into the record. In addition, the Company and City witnesses who submitted pre-filed testimony on the TOB program were proffered for cross-examination regarding both the proposed project and the Stipulation.[36]

37. On September 28, 2020, the Company filed the Issues Matrix. All parties agreed to the summation of the issues as set forth in the matrix.[37]

38. On October 7, 2020, all parties filed Initial Briefs on the TOB program and Stipulation. CPE also filed proposed Findings of Fact regarding the Settlement.[38]

39. On October 21, 2020, the parties filed Reply Briefs on the TOB program and Stipulation.[39]

IV. Overview of the Company's Application to Increase Rates

40. CenterPoint Energy Minnesota Gas provides natural gas sales, transportation, and storage services to its Minnesota customers. The Company serves approximately 260 communities in Minnesota, serving approximately 800,000 residential and 70,000 commercial and industrial customers.[40]

41. The Company initiated this proceeding in October of 2019, seeking authority to raise its rates, so that its revenues would increase by approximately $62.032 million. The Company maintained that a rate increase was needed because it faced additional expenses for capital investments and higher costs for delivering service. CPE argues that, in order to maintain the reliability of its system and ensure the safety of its customers, employees, and the public, additional revenue is needed.[41]

42. Under the Company's proposed rates, the monthly residential bill for a customer using 900 therms would increase from $55 per month to $60 per month, an increase of approximately 9.1 percent. Commercial-industrial customers using up to 1,500 therms per year would have an increase of approximately 10.5 percent. The largest commercial-industrial class customers – those using over 5000 therms annually – would see an increase of roughly 3.1 percent. The average large volume dual fuel sales service customer would face an increase of approximately 4.4 percent.[42]

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[36] Hearing Transcript (Tr.) at 9, 19-85 (e Docket No. 202010-166982-01).
[37] Issues Matrix (Sept. 28, 2020) (eDocket No. 20209-166896-01).
[38] Proposed Findings (October 7, 2020) (eDocket No. 202010-167134-03).
[39] *See* eDocket Nos. 202010-167601-01, 202010-167601-02, 202010-167608-01, 202010-167619-01, 202010-167621-01, 202010-167621-02, 202010-167622-01, 202010-167624-02.
[40] Ex. CPE-34 at 2 (Tutunjian Direct).
[41] *Id.* at 15 (Tutunjian Direct).
[42] Ex. CPE-4 at 3 (Notice of Application for Rate Increase).

43. The chart below[43] shows the average monthly bill by customer class, calculated using CPE's rates as of October 28, 2019, its interim rates, and its proposed final rates:

Customer Type (usage in therms)	Avg monthly usage in therms	Avg monthly bill: current rates	Avg monthly bill: interim rates	Avg monthly bill: proposed rates
Residential	75	$55	$59	$60
Commercial/Industrial				
up to 1,500/year	69	$57	$61	$63
1,500 to 5,000/year	249	$164	$172	$174
5,000 or more/year	1,519	$891	$929	$919
Small Volume Dual Fuel Sales Service				
up to 120,000/year	3,896	$1,709	$1,783	$1,752
120,000 or more/year	13,901	$5,861	$6,092	$6,092
Large Volume Dual Fuel Sales Service	38,836	$15,298	$15,796	$15,968
Large General Firm Sales Service	53,808	$24,796	$25,644	$25,804
Demand charge (per Peak Day)	3,490			

*Figures above are rounded (to the nearest whole number).

44. The Company issues to customers in each customer class a monthly bill that includes a fixed charge (called the Basic Charge) and a charge for the volume of gas that the customer consumed that month (called the Delivery Charge).[44]

45. The Company proposed increases for each customer class to both the Basic Charge and the Delivery Charge. For example, the Company sought permission to increase the Basic Charge for its residential customers from $9.50 to $12.00 and the Delivery Charge for the gas consumed from $0.21036 per therm to $0.24101 per therm.[45]

46. The chart below[46] shows the Company's current and proposed Basic and Delivery Charges:

[43] *Id.*
[44] *See id.*
[45] *Id.*
[46] *Id.*

Customer Type (usage in therms)	Current monthly basic charge	Proposed monthly basic charge	Current delivery charge/therm	Proposed delivery charge/therm
Residential	$ 9.50	$ 12.00	$0.21036	$0.24101
Commercial/Industrial				
up to 1,500/year	$ 15.00	$ 20.00	$0.21208	$0.22558
1,500 to 5,000/year	$ 21.00	$ 26.00	$0.17088	$0.19213
5,000 or more/year	$47.50	$ 55.00	$0.15354	$0.16721
Small Volume Dual Fuel Sales Service				
up to 120,000/year	$ 55.50	$60.00	$0.12421	$0.13399
120,000 or more/year	$ 88.50	$95.00	$0.11497	$0.12396
Large Volume Dual Fuel Sales Service	$ 900.00	$ 1,050.00	$0.07048	$0.08386
Large General Firm Sales Service	$ 900.00	$ 1,050.00	$ 0.07048	$ 0.08386
Demand charge (per Peak Day)			$ 0.42990	$ 0.46951

* The Gas Affordability Service Program surcharge for residential and commercial/industrial customers was reduced to $0.00000 as of September 1, 2019 as approved in Docket No. G008/M-19-255. The current and proposed delivery charges do not include the per therm Conservation Improvement Program Adjustment Rider.

47. As of September 19, 2019, the Gas Affordability Service Program surcharge for residential and commercial-industrial customers was reduced to zero.[47]

48. The Commission must set rates that are just and reasonable. Minn. Stat. § 216B.03 (2020) provides:

> Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers. To the maximum reasonable extent, the commission shall set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164, 216B.241, and 216C.05. Any doubt as to reasonableness should be resolved in favor of the consumer. For rate-making purposes, a public utility may treat two or more municipalities served by it as a single class wherever the populations are comparable in size or the conditions of service are similar.[48]

49. Minn. Stat. § 216B.16, subd. 6 (2020), provides guidance for determining just and reasonable rates. The statute requires the Commission to consider:

> [T]he public need for adequate, efficient, and reasonable service and the need of the public utility for revenue sufficient to enable it to

[47] *See* Order, *In the Matter of the Application of CenterPoint Energy Minnesota Gas, a Division of CenterPoint Energy Resources Corp., for Approval of its Gas Affordability Service Program Report*, G-008/M-19-255 at 2 (August 19, 2019) (eDocket No. 20198-155280-04).
[48] Minn. Stat. § 216B.03.

> meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.[49]

50. A familiar approach for utilities proposing rate increases is to select a test year and establish a rate base, projected revenues, forecasted expenses, and a proposed rate of return. From the test year costs, including a reasonable rate of return on rate base, the utility develops its revenue requirement. The utility conducts a study of the costs of serving each class of customers. The utility proposes how to allocate its revenue requirement among the customer classes based upon each class's cost of service and other policy goals, such as conservation. The last step is the utility's proposal for how rates should be designed to collect the appropriate revenues from each class. In this process, the Company must comply with Minnesota law, as well as prior orders of the Commission.[50]

51. The Company's revenue requirement consists of all of the expenses it incurs to provide natural gas service to its Minnesota customers. These expenses include the Company's operating expenses, depreciation on its capital assets, taxes, and a margin sufficient to allow the Company to earn its authorized rate of return.[51] With these components of its balance sheet in hand, the utility will then argue that its current revenues are insufficient to both meet its test year expenses and obtain a reasonable return on its investments.

52. Minnesota law assigns to the applicant utility the burden of proving that its requested rates are just and reasonable.[52]

53. The Minnesota Supreme Court has upheld the use of the preponderance of the evidence standard in Minnesota utility rate proceedings. It has described the applicable standard in this way:

> [W]hether the evidence, . . . if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission's statutory duty to enforce the state's public policy that retail consumers of utility services shall be furnished such services at reasonable rates.[53]

[49] Minn. Stat. § 216B.16, subd. 6.
[50] *See generally* Minn. R. 7825.3900 -.4300 (2019).
[51] *See generally* Minn. R. 7825.3500(D), .3900(A)-(C) (2019).
[52] Minn. Stat. § 216B.16, subd. 4 (2020); *see also* Minn. R. 1400.7300, subp. 5 (2019) (Unless the substantive law provides a different burden, the "party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence ....").
[53] *In re Northern States Power*, 416 N.W.2d 719, 722 (Minn. 1987).

54. Minnesota law favors settlements between litigants, in general, and specifically encourages parties to contested cases to resolve disputes amongst themselves.[54]

55. The Settlement filed by CPE, the CEOs, SRA, OAG and DER is a global accord, reaching and resolving every issue in the case, except for the City's proposed TOB program.[55]

56. The signatories to the Settlement assert that it is a useful alternative to contested case proceedings, their resolution of the disputed issues is grounded in the record, and the Settlement would result in just and reasonable rates.[56]

57. Minn. Stat. § 216B.16 subd. 1a(b) provides that:

> If the applicant and all intervening parties agree to a stipulated settlement of the case or parts of the case, the settlement must be submitted to the commission. The commission shall accept or reject the settlement in its entirety and, at any time until its final order is issued in the case, may require the Office of Administrative Hearings to conduct a contested case hearing. The commission may accept the settlement on finding that to do so is in the public interest and is supported by substantial evidence. If the commission does not accept the settlement, it may issue an order modifying the settlement subject to the approval of the parties. Each party shall have ten days in which to reject the proposed modification. If no party rejects the proposed modification, the commission's order becomes final. If the commission rejects the settlement, or a party rejects the commission's proposed modification, a contested case hearing must be completed.[57]

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[54] Minn. Stat. § 14.59 ("Informal disposition may also be made of any contested case by arbitration, stipulation, agreed settlement, consent order or default") (2020); Minn. Stat. § 216B.16, subd. 1a(a) (2020) ("When a public utility submits a general rate filing, the Office of Administrative Hearings, before conducting a contested case hearing, shall convene a settlement conference including all of the parties for the purpose of encouraging settlement of any or all of the issues in the contested case"); *see also Fid. & Cas. Co. of New York v. Gillette-Herzog Mfg. Co.*, 99 N.W. 1123, 1124 (Minn. 1904); *State Bank of New London v. W. Cas. & Sur. Co.*, 178 N.W.2d 614, 617 (Minn. 1970); *Rice Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc.*, 549 N.W.2d 96, 100 (Minn. Ct. App. 1996); *In the Matter of Otter Tail Power Company's Petition for an Advance Determination of Prudence for its Big Stone Air Quality Control System Project*, OAH 8-2500-22094-2, MPUC E-017/M-10-1082, 2011 WL 9535956, at *34 (Minn. Off. Admin. Hrgs. 2011).

[55] *See* Settlement and Accompanying Schedules (eDocket Nos. 20209-166661-01, 20209-166661-02, and 20209-166661-03).

[56] Settlement at 3, 22 (eDocket Nos. 20209-166661-01) (Settlement) ("The Settling Parties further agree that these terms are intended to work in concert with each other as an integrated whole for the purposes of achieving an outcome in this Rate Case that is in the public interest and that will result in just and reasonable rates.... The Settling Parties agree that this Settlement has been entered into as a resolution of the particular issues between them in order to minimize litigation, regulatory costs, and controversy").

[57] *Id*.

58. If the Commission approves the Settlement, apart from the TOB issue brought forward by the City, the case is concluded. If the Commission proposes modifications to the Settlement, which are later rejected by one or more of the parties, Minn. Stat. § 216B.16 subd. 1a(b) requires a remand of the matter to the Office of Administrative Hearings to complete an evidentiary hearing and the contested case.[58]

V. Key Provisions of the Settlement

59. The Settlement provides: the settling parties' positions on each disputed issue; references to the underlying record with respect to each party's claims on those issues; and details the resolution of each matter in dispute. The settlement accord was a global resolution of the issues in the contested case, achieved through a series of component compromises.[59] A few points deserve special emphasis.

60. First, the agreed-upon rate increase of $38.5 million dollars represents a one-third reduction in revenue from the Company's initial request of $62.032 million. The amount of the reduction reflects both the rigor of the settlement talks and the seriousness of the parties in fashioning a mutually agreeable accord.[60]

61. Second, the settlement proposes to recover the revenue deficiency through a modest rate increase applied to every customer class. The Settlement proposes apportioning the revenue requirement by way of an equal percentage increase of non-Conservation Improvement Program (CIP) revenues across classes. Accordingly, the revenue increase assigned to the Residential class is approximately 5.1 percent, 5.9 percent is assigned for the Commercial A class, and 4.5 percent is assigned for the Commercial and Industrial B classes.[61]

62. The increases initially proposed in the Company's Application were much higher: 8.6 percent for the Residential class, 10.3 percent for the Commercial A class, and 6.3 percent for the Commercial and Industrial B classes.[62]

63. Third, the rate design proposed in the Settlement distinguishes between large-volume and small-volume customers. The small-volume customer classes (residential and small business customers) will see an increase in their Delivery Charge, but their monthly Basic Charge will remain unchanged. The large-volume customer classes will have both their Basic Charges and their Delivery Charges increased.[63]

64. The parties' agreement on the amount of the fixed and variable charges is a significant achievement. At the outset of these proceedings, the parties differed sharply as to cost causation in natural gas service and the role that fixed monthly charges play in

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[58] *See* Minn. Stat. § 216B.16 subd. 1a(b).
[59] Settlement at 3, 22.
[60] *See id.* at 2.
[61] *See* Ex. CPE-14 at 51 (Feingold Direct) and Settlement Schedules, Attachment 2 at Schedule E-1(A) (eDocket No. 20209-166661-03).
[62] *Id*.
[63] Settlement at 20.

promoting energy conservation, securing stable rates, and reducing subsidies between classes of customers.[64]

65. Moreover, a number of public commenters objected to the increase in the Basic Charge for residential customers.[65] This was not an easy riddle to solve.

66. Fourth, the Settlement's proposed cost of capital is reasonable and supported by the record. In direct testimony, the Company proposed a capital structure, recommended particular values for the cost of long-term and short-term debt, and urged an increase in its return on equity (ROE). It recommended an overall weighted average cost of capital (WACC) of 7.42 percent.[66]

67. The DER similarly provided testimony on the Company's capital structure and recommended values for the cost of long-term and short-term debt and ROE. It recommended a lower WACC of 6.71 percent.[67]

68. The OAG provided testimony on the Company's capital structure, the cost of short-term debt, and ROE. It recommended a WACC that fell in the range between 6.42 and 6.61 percent.[68]

69. The Settlement's proposed cost of capital of 6.86 percent falls below the midpoint of the range of the parties' WACC recommendations.[69]

70. As part of the Settlement, the parties agreed to leave some sub-components of the overall WACC unspecified. The Settlement, for example, does not establish a particular ROE, capital structure, overall costs for long-term debt or short-term debt, or amounts for flotation costs.[70]

71. Indeed, the parties only specified costs of debt in two limited instances: The Settlement establishes an overall cost of debt to be used for interest synchronization calculations and a cost of short-term debt to be used for the CIP tracker.[71]

72. It was appropriate to avoid the costs that would be incurred in resolving the disputes over the component parts of the cost of capital calculation when there was an overarching agreement on a WACC of 6.86 percent. Litigating the "building blocks" of

[64] *See* Ex. CPE-10 at 60-61 (Feingold Direct); Ex. DER-10 at 44-45 (Zajicek Direct); Ex. CPE-11 at 44 (Feingold Rebuttal); Ex. DER-15 at 6-7 (Zajicek Rebuttal); Ex. CEO-1 at 4-11 (Twite Direct); Ex. OAG-1 at 60-65 (Lebens Direct).
[65] *See generally* Pub Tr. (eDockets 20208-166275-01, 20208-166275-02, 20208-166275-03, 20208-166275-04).
[66] Ex. CPE-8 at 112 (Bulkley Direct); CPE-27 at 21 (McRae Rebuttal).
[67] Ex. DER- 6 at 100 (Addonizio Direct).
[68] Ex. OAG-1 at 58 (Lebens Direct).
[69] *See generally* Settlement at 3.
[70] *Id*.
[71] *Id*.

that calculation was not in the interest of the parties, ratepayers, or the public when the parties agreed what the sum of that calculation should be.[72]

73. In this context, it is noteworthy to mention that in the Company's last rate case, the Commission approved a settlement accord that similarly left some details undefined.[73] And rightfully so. The Commission recognized then that it is better to have a general compromise on the things that matter, than pitched battles over details that don't. This same conclusion should apply today.

74. The selection of a WACC of 6.86 percent is a fine compromise that is well-supported by the underlying record. The analysts for CPE, OAG, and DER all used familiar estimation techniques when deriving their different values for ROE and the cost of capital. Moreover, the point at which the parties later compromised was more than simply "splitting the difference;" the final accord is in keeping with each of their individual assessments. A difference of 15 to 25 basis points, in the case of OAG's and DER's analyses, is a validation of the agencies' approaches more than it is a retreat from them.[74]

75. Lastly, and perhaps most importantly, a WACC of 6.86 percent for CPE reflects the key purposes and values of the ratemaking enterprise. It is likely to generate enough resources for CPE to provide: "adequate, efficient, and reasonable service;" "meet the cost of furnishing the service;" and "earn a fair and reasonable return upon the investment in [its] property."[75]

76. Fifth, the Settlement is informed by, but does not endorse, the Company's Class Cost of Service Study (CCOSS). DER expressed the view in pre-filed testimony that the company's CCOSS was "generally reasonable,"[76] and this assessment paved the way for later compromise on cost and rate design issues.

77. Sixth, in the Settlement, the parties agree to a $2.021 million reduction in test year property taxes. The accord allows $35.704 million for taxes in the test year and reflects the Company's history of property tax assessments.[77]

78. The Company will continue to utilize a tracker to record actual property tax expense against the test year amounts; although that tracking mechanism is improved under the Settlement. The parties agreed to update the tracker balance to reflect the actual 2019 property tax expenses and a $1.282 million test year operating expense reduction to correct an adjustment error. Finally, the parties agreed that the disposition of any cumulative variance in the tracker between actual property tax expense versus the test year assumptions will be resolved in the Company's next rate case.[78]

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[72] *See id.* at 3, 22.
[73] *See* Ex. OAG-1 at 46 (Lebens Direct).
[74] *See* Settlement at 3.
[75] *See* Minn. Stat. § 216B.16, subd. 6.
[76] *See* Ex. DER-15 at 13 (Heinen Rebuttal); *see also* Ex. DER- 9 at 60-65 (Heinen Direct).
[77] Ex. DER-3 at 14 (Morrisey Direct).
[78] Ex. DER-3 at Schedule DEM-2 (Morrisey Direct).

79. This resolution is a reasonable compromise. It permits the Company to recover property tax expenses, boosts accuracy in the accounting of those costs, and incentivizes CPE to contest excessive tax assessments.[79]

80. Seventh, a number of the disputed issues were resolved by using actual cost data to increase confidence in the test year amounts. These include: (1) the use of actual plant balances at the beginning of the test year rather than the Company's projected plant balance; (2) using the prior year's actual Liquified Natural Gas (LNG) revenues in place of projected revenues; and (3) removing expenses related to the Company's Permanent Records Integrity Management Excellence (PRIME) program from the test year, but allowing recovery of the 2020 costs as an offset against any interim rate refund.[80]

81. Minn. R. 7825.3300 (2019) governs the interest to be paid to customers on refunds of over-collection of utility rates. The rule provides that amounts unreasonably collected from ratepayers "shall be refunded to customers or credited to customers' accounts within 90 days from the effective date of the commission order . . . including interest at the average prime interest rate computed from the effective date of the proposed rates through the date of refund or credit."[81]

82. Under the Settlement, the Residential class provides approximately 63 percent of the Company's revenues.[82]

83. Assuming $14 million will be returned to ratepayers following the implementation of final rates, CPE's roughly 800,000 residential customers will see a refund of a little more than $11.00.[83]

84. The impact per customer of the difference between interest on an $11.00 refund calculated at prime rate, as opposed to the Company's overall cost of capital, is de minimus.[84]

85. The Settlement obligates the signatories to support and defend it in its entirety without modification.[85]

86. The Settlement provides for the confidentiality of settlement offers and discussions. In the event that the Commission rejects the Settlement, the agreement provides that:

(a) Its terms shall not be part of the record and that no party may use the accord for any purpose in any proceeding; and

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[79] *See* Settlement at 8-9.
[80] *See* Settlement at 6-9.
[81] Minn. R. 7825.3300 (2019).
[82] *See* Settlement at 18-19.
[83] *See generally* CPE Ex. 12, GLF-D Schedule 5.1, at 1 (Fitzpatrick Direct).
[84] *Id. See also* Staff Briefing Papers, Docket No. G-008/GR-19-524 (December 5, 2019) (between 1995 and 2019 "the average prime rate was 4.8%") (footnote omitted).
[85] Settlement at 22.

(b) The parties are free to argue their positions as set forth in their pre-filed testimony.[86]

87. This report details the key disputes between the parties and the proposed resolution of those disputes. There are other, lesser items addressed in the Settlement alongside detail on the parties' litigation positions. With respect to these items, the parties' resolution is likewise reasonable and supported by the hearing record.[87] Those items are not, therefore, separately detailed here.

88. The Administrative Law Judge has reviewed the Settlement and recommends that the Commission determine that it: (a) is in the public interest; (b) is supported by substantial evidence in the record; and (c) will result in just and reasonable rates.[88]

VI. The TOB Stipulation

89. TOB, also known as "inclusive financing," allows the financing of energy efficiency upgrades through utility-provided financing that is regulated by a tariff. The tariff allows a cost recovery charge on the customer's utility bill, but this recovery charge is less than the estimated savings created by the installation of the upgrades.[89]

90. Proponents of the program regard inclusive financing as essential to improving access to energy-saving home improvements – improvements that would otherwise be financially out of reach for many renters, low-income ratepayers and those living in older homes.[90]

91. As noted above, CPE and City entered into a stipulation that resolved their dispute over the TOB program design and memorialized the parties' agreement as to seek approval of a TOB pilot project (Stipulation).[91]

92. Among the features of the Stipulation, CPE and the City agree that:

(a) the accord was reached to resolve TOB-related disputes;

(b) the City and CPE will work to enroll 500 participants in the program and add 500 additional participants each program year for the first three years;

(c) in order to qualify for program participation, the energy-saving measures "must pass the 80/20 cost-effectiveness threshold;"

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[86] *Id.* at 21-22.
[87] *Id.* at 3-21.
[88] *Id.* at 2-22.
[89] *See* Ex. CPE-44 at 2 (DeMerritt Rebuttal).
[90] *See e.g.,* Tr. at 43-44 (Bremer).
[91] *See* Stipulation Between CenterPoint Energy Minnesota Gas and the City of Minneapolis (Sept. 2, 2020) (eDocket No. 20209-166387-02) (Stipulation).

(d) "a condition of participation" in the TOB program is that customers will agree to "cooperate with the Program Operator to secure all applicable CIP rebates for equipment installed;"

(e) participating renters "must obtain property owner consent" as a condition of the program and "vice versa;"

(f) "[p]articipants will consent to allow CenterPoint Energy and the TOB Program Implementer to receive information from the electric utility about their electric bill;"

(g) "[p]articipant charges will cover measure installation costs, including an interest rate of two and one-half percent;"

(h) participants must consent to being contacted by the TOB Program Operator regarding their energy usage;

(i) annual tariff-related reporting will include, among other items, "[i]dentification of number of projects that do not realize estimated savings and reporting of the types and costs of associated repairs and any refunds or waivers issued;"

(j) program evaluation will include items such as customer surveys and "field visits to participating homes," to ensure program efficacy;

(k) the program "will initially be available only to residents of the City of Minneapolis . . . with additional communities to be added in future years, as feasible;" and

(l) the remainder of the program costs, including items such as capital, operations and maintenance, administration, program delivery, and call center integration, would be subject to deferred accounting and placed in a tracker for possible later recovery in a future rate case.[92]

93. The parties and members of the public were sharply divided over the question of whether the program proposed by the City was in the best interests of low-income ratepayers in Minneapolis and ratepayers generally.[93]

94. Based upon these Findings of Fact, the Administrative Law Judge makes the following:

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[92] *Id.* at 1-4.

[93] *See* Settlement at 3 ("The Settling Parties agree to the following terms for the purpose of this Settlement, resolving all issues between the Settling Parties in this Rate Case, *with the exception of the TOB program*") (emphasis added); Pub. Tr. at 21 (Afternoon Hearing, July 28, 2020) (Bremer) (eDocket No. 20208-166275-01); Pub. Tr. at 47-108 (Evening Hearing, July 30, 2020) (Various) (eDocket No. 20208-166275-04).

CONCLUSIONS OF LAW

1. The Minnesota Public Utilities Commission and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 216B.08 (2020).

2. The public and the parties received timely and proper notice of the public and evidentiary hearings in this matter. The Company complied with all procedural requirements of statute and rule.

3. Minn. Stat. § 216B.03 requires that every rate set by the Commission be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers.[94]

4. The Commission shall set rates that, to the maximum reasonable extent, encourage energy conservation and renewable energy use and further the goals of Minn. Stat. §§ 216B.164, .241, 216C.05.

5. The burden of proof is on the Company to show that a rate change is just and reasonable.[95]

6. The record supports the resolution of disputed issues as set out in the Settlement. The Settlement's disposition of disputed issues resolves them consistently with the public interest and is supported by substantial evidence.[96]

7. Rates set in accordance with the Settlement would be just and reasonable.

8. After the Commission determines final rates, those rates should be compared to the rates established in the Commission's Order Setting Interim Rates issued on December 18, 2019. To the extent that interim rates exceed the final rates for 2020, subject to any true-up, a refund should be ordered.

9. Pursuant to rule, "interest at the average prime interest rate computed from the effective date of the proposed rates through the date of refund or credit," should be applied to the amounts "refunded to customers or credited to customers' accounts …."[97]

10. Any Findings of Fact more properly designated as Conclusions are hereby adopted as such.

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[94] Minn. Stat. § 216B.03.
[95] Minn. Stat. § 216B.16, subd. 4.
[96] *See* Minn. Stat. § 216B.16 subd. 1a(b) (2020) ("If the applicant and all intervening parties agree to a stipulated settlement of the case or parts of the case, the settlement must be submitted to the commission…. The commission may accept the settlement on finding that to do so is in the public interest and is supported by substantial evidence.").
[97] Minn. R. 7825.3300.

Based upon these Conclusions of Law, and for the reasons detailed in the accompany Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

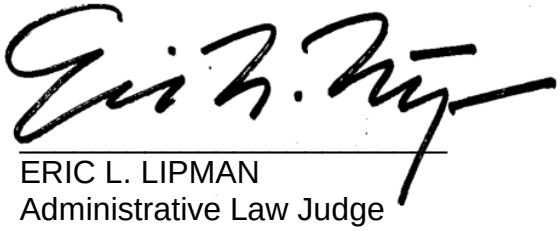
The Administrative Law Judge recommends that the Commission:

(a) Approve the Settlement and incorporate it into its Order;

(b) Approve the TOB program as stipulated to between CPE and the City of Minneapolis; and

(c) Limit the recovery of TOB program-related costs to CPE customers who reside within the City of Minneapolis until such time as ratepayers in other communities are eligible to enroll.

Dated: November 20, 2020



ERIC L. LIPMAN
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the timeframes established in the Commission's rules of practice and procedure, Minn. R. 7829.2700, .3100 (2019), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Minn. R. 7829.2700, subp. 3 (2019). The Commission will make the final determination of the matter after the expiration of the period for filing exceptions or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.

MEMORANDUM

The parties deserve great credit for finding compromises on nearly every dispute in this case. The fact that such an accord comes on the heels of settlement in the last rate case is even more remarkable. It is a model of transparent and cost-effective ratemaking.

Yet, one matter, of special complexity and difficulty, was not part of the overall agreement. Specifically, the parties could not agree as to whether approval of the TOB program would result in natural gas rates that are "just," "reasonable," and "consistent" for CPE's customers.[98]

DER takes the most forceful stand against the pilot program. It argues that approval of the program is beyond the Commission's authority to set rates and tariffs because inclusive financing is not a "service" related to the delivery of natural gas.[99] Further, it asserts that the Commission may not authorize any energy-conservation program without the permission, in advance, from the Department of Commerce.[100] In the view of the Administrative Law Judge, neither of these propositions is true.

The Commission has the power to "determine just and reasonable rates for public utilities."[101] Minn. Stat. § 216B.02, subd. 5 (2020) defines the term "rate" very broadly:

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[98] *See* Minn. Stat. § 216B.03.

[99] DER Initial Brief at 7 ("The Commission's authority to ensure 'adequate, efficient, and reasonable service' … applies to the utility's system and not the customer's property…. Conservation improvement investments and expenses are not 'services' as defined under Minn. Stat. § 216B.02, subd. 6.").

[100] DER Reply Brief at 4-5 ("[T]he Commission's authority to approve CIP costs does not begin until a CIP proposal has been approved by the Department…. It is only after the Department approves a CIP proposal that the Commission's cost recovery authority begins").

[101] *See* Minn. Stat. § 216B.16, subd. 6 (2020); *see also* Minn. Stat. § 216B.08 (2020).

> ‘Rate’ means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service **and** any rules, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.[102]

The word “and” in this definition is significant because it marks two distinct categories of ratemaking powers: the Commission has the power to set the charges and tariffs for “any service” delivered by the utility and it is authorized to regulate the practices and contracts that affect those tariffs. The combination of these powers gives the Commission regulatory control over the prices that customers pay and the underlying arrangements that make utility service possible.

The Commission has the authority to approve the TOB program because it relates to the charges that a program participant will pay for natural gas service and the “practices” and “contracts” that underlie that customer’s service.

Indeed, because there is a direct relationship between the amount of energy that we conserve today and the utility infrastructure that we will need to purchase tomorrow,[103] the authority to approve energy-saving programs is necessarily part of the power to set rates.[104]

The suggestion that the Commission has no powers, or very limited ones, to approve energy conservation programs, follows from the misreading of an old case – the Minnesota Court of Appeals’ decision *In the Matter of the Implementation of Utility Energy Conservation Improvement Programs and the Establishment of a Utility Renewable Resources Pilot Program*, 368 N.W.2d 308 (Minn. Ct. App. 1985) (*In Re Pilot Program)*. In that case, the Commission approved the disbursement of $200,000 by the Peoples Natural Gas Company for a CIP. The program pledged to complete weatherization projects, community education, and energy audits within the company’s service territory. Significantly, the Commission’s approval of the program occurred outside of a ratemaking proceeding for Peoples Natural Gas.

Hanna Mining Company, a ratepayer within the company’s service territory, objected to the Commission’s approval of the program. It demanded contested case proceedings on whether the CIP should be funded at all. On review, a panel of the Minnesota Court of Appeals held that the mining company was not entitled to contested case proceedings on the approval because the mining company’s rights were not

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[102] Minn. Stat. § 216B.02, subd. 5 (emphasis added).

[103] *See* COM Ex. 2, Attachment B at 4 (Agard Direct); *see also* Minn. Stat. § 216B.2401 (2020) (“The legislature finds that energy savings are an energy resource, and that cost-effective energy savings are preferred over all other energy resources. The legislature further finds that cost-effective energy savings should be procured systematically and aggressively in order to reduce utility costs for businesses and residents, improve the competitiveness and profitability of businesses, create more energy-related jobs, reduce the economic burden of fuel imports, and reduce pollution and emissions that cause climate change”).

[104] *See* Minn. Stat. § 216B.16, subd. 6 (2020); *see also* Minn. Stat. § 216B.08 (2020).

impacted by the decision, presumably because the costs of the conservation program were not yet a part of the gas company's proposed rates. The panel observed:

> Energy conservation improvements are not 'service' as defined by Minn. Stat. § 216B.02, subd. 6, but rather are purchases or installation 'of any device, method or material that increases the efficiency in the use of electricity or natural gas' and includes such materials as insulation and caulking. Minn. Stat. § 216B.241, subd. 1(b) (1984). The service referred to in Minn. Stat. § 216B.09 is limited, and **the statute does not require hearings before a conservation improvement program can be implemented**.[105]

In this case, DER and others, read the phrase "energy conservation improvements are not service as defined by Minn. Stat. § 216B.02, subd. 6," as signifying that the Commission has no authority to authorize energy-saving programs that are not a CIP.[106] The Administrative Law Judge disagrees.

As noted above, the holding of the *Pilot Program* case is quite narrow: approval of a conservation improvement program, in and of itself, does not entitle opponents of the program to a contested case hearing. This is a true and correct statement of the law and has almost nothing to do with the dispute that is presented here.

Second, there is nothing in either the opinion from *In Re Pilot Program* or in Minn. Stat. ch. 216B that states that the *only* energy saving programs that the Commission may approve are CIPs under Minn. Stat. § 216B.241. Indeed, the opposite is true. When setting out the state's energy policy, more than three decades after the *Pilot Program* case was decided,[107] the Minnesota Legislature declared that CIPs are just one of many methods the state should use to conserve energy. The most-recent version of the state's energy policy reads:

> [I]t 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**, energy efficiency achieved by energy consumers without direct utility involvement, energy codes and appliance standards, **programs designed to transform the market or change consumer behavior**, energy savings resulting from efficiency improvements to the utility infrastructure and system, **and other efforts to promote energy efficiency and energy conservation**.[108]

[105] *In Re CIP,* 368 N.W.2d at 313 (emphasis added).
[106] DER Reply Brief at 4-5; OAG Reply Brief at 1-4.
[107] *See* 2007 Minn. Laws ch. 136, art 2, § 4.
[108] Minn. Stat. § 216B.2401 (2020) (emphasis added).

If the legislature intended that Department-approved CIPs were the only mechanism for pursuing energy conservation, it would have said so here.[109] It didn't.

The better reading of Chapter 216B is that the CIPs are the floor, but not a ceiling, to Minnesota's conservation efforts. CIPs are the proverbial "floor" because natural gas utilities in Minnesota must "spend and invest" for energy conservation improvements "0.5 percent of its gross operating revenues from service provided in the state. . . ."[110] Yet, there is no restriction in Minn. Stat. § 216B.241 or elsewhere on spending more or pursuing "other efforts to promote energy efficiency and energy conservation."[111]

Indeed, the legislature took pains to emphasize this point when establishing CIPs. Minn. Stat. § 216B.241, subd. 5d(j) (2020) provides that the authorization of lender-supported conservation programs "does not prohibit a utility from establishing an on-bill financing program in which the utility provides the financing capital."[112] Accordingly, the better view is that there aren't narrow restrictions on the conservation programs that the Commission may approve. When it comes to energy-saving programs, the legislature wanted a thousand flowers to bloom.[113]

Because the proposed TOB program is one that the Commission can approve, the question necessarily becomes should it approve this one? The answer to that question is yes. The Stipulation between CPE and the City reflects thoughtful and coolly unsentimental program design. They will start slowly, invest sensibly, and continually reassess the program's accomplishments, shortcomings and methods.

The key objections to approving the program is that the rates offered to TOB participants are unfairly preferential[114] and will push unrecoverable program costs on to customers who live outside of Minneapolis.[115]

The claim of unfair discrimination is overstated. As to the Basic Charge and the Delivery Charge, the rates that program participants will pay mirror those paid by customers outside of Minneapolis. There is no difference. Where the bottom lines do differ, those modest differences are justified by the different duties assumed by program participants – such as duties to pay interest, make disclosures about home energy use, and respond to inquiries from program staff. These differences balance the benefit of being able to immediately monetize energy savings to finance home improvements. It is not unfair rate discrimination to treat customers who have slightly different obligations, slightly differently.

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[109] *See* Minn. Stat. § 645.16 (2020) ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.").
[110] Minn. Stat. § 216B.241, subd. 1a(a)(1) (2020).
[111] *See generally* Minn. Stat. § 216B.2401.
[112] Minn. Stat. § 216B.241, subd. 5d(j).
[113] *See* Minn. Stat. § 216B.2401.
[114] *See e.g.,* DER Initial Brief at 15-16; DER Initial Brief at 13; SRA Reply Brief at 6.
[115] DER Initial Brief at 11-12; Comment by Energy CENTS Coalition and Minn. Community Action P'ship at 4 (Aug. 20, 2020) (eDocket No. 20208-166041-01).

Concerns over a rising ride of bad debt from the program are real, but should not block approval of the pilot project. An equitable solution to the problem of bad debt is simple enough. As the SRA suggests,[116] the Commission could limit assessments of later, unrecoverable costs from the pilot program to CPE customers in Minneapolis. Those customers are the only ones who are eligible to enroll in the pilot program and they have the most to gain from this city-specific innovation. The holding in *Northern States Power Co. v. City of Oakdale*, 588 N.W.2d 534 (Minn. Ct. App. 1999) validates such an approach.[117]

This, of course, brings us to the bottom-line of the analysis: Because the City and CPE are pledging their time, resources and reputations to make the TOB program successful, their voices should be given the most weight and carry the day. Like the Settlement that preceded it, the Stipulation deserves the Commission's support.

E. L. L.

[116] SRA Initial Brief at 7-8; SRA Reply Brief at 5-6.

[117] *N. States Power Co. v. City of Oakdale*, 588 N.W.2d at 543 (a remedy to additional costs occasioned by a city mandate to install transmission lines underground was to "request the commission [to] allocate additional costs of complying with the ordinance to the ratepayers benefiting from the service").

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November 20, 2020

See Attached Service List

Re: ***In the Matter of the Application by CenterPoint Energy Resources Corporation d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Gas Rates in Minnesota***
OAH 8-2500-36579
MPUC G-008/GR-19-524

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION TO APPROVE THE PARTIES' SETTLEMENTS** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7881, at anne.laska@state.mn.us; or via fax at (651) 539-0310.

Sincerely,

ANNE LASKA
Legal Assistant

Enclosure
cc: Docket Coordinator

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CERTIFICATE OF SERVICE

In the Matter of the Application by CenterPoint Energy Resources Corporation d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Gas Rates in Minnesota	OAH Docket No.: 8-2500-36579 MPUC G-008/GR-19-524

Anne Laska certifies that on November 20, 2020, she served the true and correct **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION TO APPROVE THE PARTIES' SETTLEMENTS** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

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