

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Great Plains Natural Gas Co.
Merge w/Montana-Dakota Utilities Co.
Application**

Case No. PU-2228-00-28

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April 26, 2000

Appearances

Commissioners Bruce Hagen, Leo M. Reinbold and Susan E. Wefald

Tom K. Hopgood, Senior Attorney, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., P.O. Box 5650, Bismarck, North Dakota 58506-5650 on behalf of Montana-Dakota Utilities Co. and Great Plains Natural Gas Co.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505-0480 on behalf of the Public Service Commission.

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882 as procedural hearing officer.

Preliminary Statement

On January 21, 2000, Great Plains Natural Gas Co. (Great Plains) and Montana-Dakota Utilities Co., (MDU) a Division of MDU Resources Group, Inc. filed a joint application requesting approval of the merger of Great Plains into MDU Resources Group, Inc. under a Plan of Reorganization and Merger (Agreement) entered into on January 18, 2000. The applicants stated that MDU and Great Plains will operate as two separate divisions of MDU Resources Group, Inc. and there will be no change in rates or service to customers of either company.

On February 4, 2000, MDU and Great Plains filed a Joint Application to Protect Information, more commonly referred to as an application for trade secret protection. By Order dated February 9, 2000, the Commission granted the requested trade secret

protection with the exception of information relating to the identity of parties affiliated with employee benefit plans.

On February 9, 2000, the Commission issued its Corrected Notice of Hearing and Notice of Public Input Session stating that the issue to be considered in this matter is whether the proposed merger is compatible with the public interest.

During the noon hour on March 14, 2000, the Commission held a public input session via interactive television at the Mildred Johnson Library, Room 117, NDSCS, Wahpeton, North Dakota 58075, and in the Fort Lincoln Room, Ground Floor, State Capitol, Bismarck, North Dakota. A public hearing on the application was held on March 14, 2000 at 1:30 p.m. (CST) in the Commission hearing room, State Capitol, 12th Floor, Bismarck, North Dakota 58505. At the hearing, testimony was heard from MDU, Great Plains and the Commission Staff. There were no other parties involved in the proceeding.

On March 24, 2000 the applicants filed a Supplemental Application requesting approval of the transfer of the certificate of public convenience and necessity currently held by Great Plains to MDU Resources Group. On March 29, 2000 the Commission issued a Notice of Opportunity to comment regarding the request to transfer the public convenience and necessity certificate, allowing interested parties to comment until April 24, 2000. No comments were received.

Findings of Fact

1. MDU is an investor-owned gas and electric utility incorporated in the state of Delaware. MDU currently provides natural gas utility service to approximately 204,000 customers in North Dakota, South Dakota, Wyoming, and Montana. MDU also provides electric utility service to about 114,000 customers in these same states.
2. Great Plains is an investor-owned gas utility incorporated in the state of Minnesota. It is engaged in business as a local distribution company in eighteen communities in Minnesota and in Wahpeton, North Dakota. Great Plains currently provides natural gas utility service to approximately 2,000 customers in North Dakota under Certificate of Public Convenience and Necessity No. 474, issued in 1965. Great Plains also provides natural gas service to approximately 20,000 customers in Minnesota. Great Plains' primary sources of pipeline gas supply are its interconnections with The Viking Gas Transmission and Northern Natural Gas transmission pipelines.
3. The Plan of Reorganization and Merger ("Agreement") was entered into on January 18, 2000. The Agreement provides that Great Plains will be merged into MDU Resources Group, forming a single company. MDU and Great Plains will operate as two separate divisions of MDU Resources Group, as MDU does now. This transaction is required to be accounted for under the "purchase method" of accounting with any

amount paid above net book value treated as an acquisition adjustment. Entering into the Agreement was duly authorized by MDU Resources Group's and Great Plains' boards of directors prior to execution of the Agreement.

4. The applicants state that under the terms of the Agreement, shares of MDU Resources Group Common Stock will be exchanged for the issued and outstanding shares of Great Plains Common Stock.

5. The applicants state that the transaction is subject to customary closing conditions, including the receipt of all necessary governmental approvals. The sole shareholder of Great Plains has executed the Agreement. Shareholder approval on the part of MDU Resources Group is not required. State approvals or notices are required in Minnesota and North Dakota. The merger will occur immediately upon receiving regulatory approval from this Commission and the Minnesota Public Utilities Commission.

6. The applicants state that the merger will be transparent to Great Plains' and MDU's customers, that the cost of capital will not change to any significant degree for either company, that there is no change in rates proposed for either company, that there are no material cost savings or increases anticipated for either company and that there will be no adverse effects on customer service.

7. At the hearing, staff witness Mike Diller, Director of Accounting, testified that staff recommends the Commission approve the merger, but disallow rate recovery of any costs above net book value paid for the purchase of Great Plains. He expressed concern that allowing recovery of a purchase price premium or acquisition adjustment in rates would send an improper signal to utilities that swapping companies back and forth can artificially increase the required investment necessary to provide service as well as the rates to cover the inflated investment.

8. The application contains no request for rate recovery of the purchase price premium. MDU witness C. Wayne Fox, Vice President, Regulatory Affairs, testified that MDU has not applied for rate recovery of purchase costs and therefore a decision regarding rate treatment is premature.

9. The Commission finds that this is not the appropriate proceeding in which to make a determination regarding recovery of the purchase price premium. The appropriate proceeding in which to address recovery of any portion of the purchase price premium is a future rate proceeding. The Commission's finding in no way implies approval, now or in the future, of rate recovery for the premium or other purchase costs.

11. Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., has agreed to disclose the effect of its amortization of the purchase price premium with each annual report until the amortization is complete. This is acceptable to the Commission. These annual filings should report earnings for Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., both with and without the premium.

10. The Commission finds that the proposed merger of Great Plains into MDU Resources Group, Inc. is compatible with the public interest.

11. The applicants assert that there has been a need for natural gas service in Wahpeton and its environs since that need was shown when Great Plains first was certified to provide service in that area, in 1965. The applicants further point out that Great Plains has provided safe and reliable service to Wahpeton and its environs since 1965 and the customers, the facilities and the personnel providing the service will remain the same.

12. The applicants show that no other public utility provides gas service in the area served by Great Plains. Further, there will be no change in the technical or managerial personnel providing the service.

13. The Commission finds there is a need for natural gas distribution service in the Great Plains service area and MDU Resources Group, Inc.'s proposed continuation of Great Plains' existing service is adequate to meet the need.

14. The Commission finds that Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., will be fit and able to provide natural gas distribution service in the area currently served by Great Plains.

15. The Commission finds no evidence of any adverse effect on other public utilities providing similar service.

16. The Commission finds that Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., will have the technical, financial and managerial ability to provide natural gas distribution service in the area currently served by Great Plains.

Conclusions of Law

1. The Commission has jurisdiction of the parties and the subject matter of this proceeding under N.D.C.C. Chapter 49.

2. The proposed merger of Great Plains into MDU Resources Group, Inc. is compatible with the public interest and should be approved.

3. There is a need for natural gas distribution service in the Great Plains service area and MDU Resources Group, Inc.'s proposed continuation of Great Plains' existing service is adequate to meet the need.

4. Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., will be fit and able to provide natural gas distribution service in the area currently served by Great Plains.

5. There is no evidence of any adverse effect on other public utilities providing similar service.
6. Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., will have the technical, financial and managerial ability to provide natural gas distribution service in the area currently served by Great Plains.
7. The applicants are entitled to a transfer of Certificate of Public Convenience and Necessity No. 474 currently held by Great Plains to Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc.

Order

The Commission Orders:

1. The joint application of MDU and Great Plains requesting approval of the merger of Great Plains Natural Gas Co. into MDU Resources Group, Inc. under a Plan of Reorganization and Merger (Agreement) entered into on January 18, 2000 is GRANTED.
2. The joint application of MDU and Great Plains to transfer Certificate of Public Convenience and Necessity No. 474 from Great Plains to Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., is GRANTED. A Certificate of Public Convenience and Necessity implementing this order will be issued upon notification by the applicants that the transaction is complete.
3. Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc. shall disclose the effect of its amortization of the purchase price premium with each annual report until the amortization is complete. These annual filings should report earnings for Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., both with and without the premium.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Bruce Hagen
President

Leo M. Reinbold
Commissioner

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**CONCURRING OPINION
COMMISSIONER SUSAN E. WEFALD**

April 26, 2000

I concur with much of this order, but dissent in part.

Customers should be able to count on customer benefits from mergers and acquisitions. At the very least they should have the assurance that there will be no harm. In this case, the Commission is not giving them that assurance. I do not agree with the Commission's handling of "acquisition premiums" in this order. "Acquisition premiums" are the costs above net book value paid for the purchase of Great Plains Natural Gas Company (Great Plains).

The Commission should be requiring Montana Dakota Utilities (MDU) to decide within 45 days if it wishes to ask for recovery of the acquisition premium, rather than letting this matter be considered at a future rate proceeding. This is important because companies should have to show both benefits and costs that will be passed on to customers at the time of the merger, and not file these in "installments."

It is important to note that Wahpeton ratepayers will not share in any gain in the sale of Great Plains.

By not requiring MDU to present acquisition costs and compare them to real benefits from the merger in the near future, we are not able to assure customers that there will be "no harm."

Finding #7 includes statements of facts concerning rate recovery of any costs above net book value paid for the purchase of Great Plains. Prior to the hearing, one of our staff members filed a memo in this case, which stated that the Commission should approve the merger, but disallow rate recovery of any costs above net book value paid for the purchase of Great Plains. The memo continues, "...staff believes that the Commission should decide how these costs should be handled before approving the merger so there are no arguments in future rate proceedings." Montana Dakota Utilities (MDU) was given a chance to review this memo, and was ready to respond to the memo at the time of the hearing.

Finding # 8 states the response of MDU in this matter. MDU stated at the hearing that the application contained no request for rate recovery of the acquisition premium and that therefore a decision at this time is premature.

It is important to keep in mind, however, that if MDU had asked for recovery of acquisition costs at this time, there would be harm to customers, and the Commission would have no choice but to deny this merger, unless the Commission chose to disallow the costs.

In response to MDU, staff recommended at the hearing that the Commission require MDU to determine within 45 days if it would request cost recovery of the acquisition premium. This recommendation made excellent sense because everyone involved would have a chance to address this important topic in the very near future. Also, the Commission had handled another request for recovery of an acquisition premium for Viking Pipeline in this manner several years ago. (Northern States Power Company Natural Gas Rates, Case No. PU-400-93-534)

It is not fair to customers to put this decision off and make a decision at some distant time in the future. MDU at this time is not able to state any definite benefits from the merger. In Finding #6 they state only that the merger will be transparent to Great Plains and MDU customers. When a company presents a merger case to the Commission, they should be presenting all of the benefits and costs, so that the Commission can make a thoughtful decision. The record should be complete at this time, and not subject to modification several years later when a rate case is being considered.

Delaying this matter until some future cost case means that acquisition premium costs might get mixed up with other rate case issues. This is not fair to customers because this case should be denied if there are acquisition premium costs without benefits.