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November 18, 2019

Mr. Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

**Re: In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Utility Service in Minnesota
Docket No. E-015/GR-19-442**

Dear Mr. Wolf:

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) submits these reply comments in response to the Commission’s November 5, 2019 Notice of Comment Period. The OAG agrees with the Minnesota Department of Commerce (“Department”) and the Large Power Intervenors (“LPI”) that Minnesota Power (or “the Company”) has improperly excluded certain wholesale revenues in calculating interim rates.

The Company has a ten-year contract to sell surplus power to Basin Electric Power Cooperative (“Basin wholesale contract” or “Basin contract”). The Basin wholesale contract expires on April 30, 2020, but will generate revenue for the first four months of 2020. Minnesota Power proposes not to include that revenue in interim rates, thereby artificially inflating the Company’s interim revenue requirement by roughly \$8.5 million.¹ The Commission should require Minnesota Power to credit ratepayers with this known revenue for purposes of interim rates.

Minnesota Statutes section 216B.16, subdivision 3(b) (“the interim-rate statute”), requires that interim rates include rate-base and expense items of the same nature and kind as those reflected in current rates. There are good policy reasons for this requirement—the Commission sets interim rates without the benefit of a fully developed record or a meaningful opportunity for ratepayer advocates to investigate claimed costs. Accordingly, when a utility seeks to recover a new category of cost, that new expense is not permitted to be included in rates until it has been fully vetted through the contested-case process.

¹ See Department Comments at 3 (Nov. 12, 2019).

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In ratemaking, removing a source of revenue is functionally the same as including a new expense category. Therefore, when a utility proposes to remove a source of revenue from current rates, ratepayers are entitled to have that revenue loss carefully scrutinized through the rate-case process before the change is reflected in rates, just as they would with an entirely new expense. This is especially true for a revenue item as large as the Basin wholesale contract. Basin contract revenue is included in Minnesota Power's current rates.² Thus, to reflect items of the same nature and kind as current rates, interim rates should include, at minimum, the known revenue from the contract that will accrue through the end of April 2020.³

Not only is this result consistent with the interim-rate statute, but it also resolves any doubt in favor of ratepayers as required by section 216B.03. The Department points out, for example, that new wholesale contracts could end up replacing some or all of the lost Basin contract revenue. Given the early procedural stage of this case, fairness requires that ratepayers be given the benefit of the doubt as to whether other sources of revenue will make up for the lost Basin wholesale contract revenue.

Minnesota Power argues that it is appropriate to stop crediting ratepayers with Basin wholesale revenue before the contract expires because they began receiving credit for the revenue before the contract took effect.⁴ The Company's argument can be summarized as follows: The Basin contract took effect in May 2010. In the Company's 2010 test-year rate case, the Commission annualized the revenue impact of the contract over January–December 2010. Therefore, ratepayers began receiving revenue from the contract as of January 1, 2010, four months before it took effect, and it is appropriate to cease crediting ratepayers with the revenues four months before the contract expires.

There are at least two factual problems with this argument, in addition to those pointed out by LPI. First, Minnesota Power claims that the Commission annualized the Basin wholesale contract revenues in its *final* rate determination in the 2010 rate case; however, the rates in effect during 2010 were interim, not final, rates. The Company has not claimed—much less shown—that *interim* rates in the 2010 rate case reflected 12 full months of Basin contract revenues. The Company thus has not shown that ratepayers began receiving credit for these revenues before they began accruing. Second, Minnesota Power fails to mention that the Basin wholesale contract replaced a wholesale contract with Great River Energy that expired on April 30, 2010.⁵

² See *In the Matter of the Application by Minnesota Power Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-16-664, Pierce Direct Testimony at 32 (Nov. 2, 2016).

³ Even if the Commission concludes that removing the Basin wholesale contract revenue would result in rates that reflect items of the same nature and kind as current rates, it should still require that these revenues be credited to ratepayers in light of Minnesota Power's history of overstating its revenue requirement. See OAG's Initial Comments (Nov. 12, 2019) (demonstrating that exigent circumstances justify departing from the interim-rate formula in this case).

⁴ See Interim Rates Petition at 5–6 (Nov. 1, 2019).

⁵ See *In the Matter of the Application by Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-09-1151, Interim Rates Petition, Schedule B-4 at 3 (Nov. 2, 2009).

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Unless the revenue from both contracts was reflected in rates for overlapping periods in 2010, the Company cannot claim that ratepayers have been overcredited for wholesale revenues.

Not only is Minnesota Power's argument factually incorrect, but it also misapprehends the applicable law. Annualizing the revenues from a large contract is standard ratemaking practice. And even if it were true that ratepayers will have received the full benefit of the Basin contract by the time interim rates take effect in this case, interim rates do not provide the Company with a remedy. Minnesota Power seems to assume that interim rates can be used to correct an alleged misalignment in the timing of revenue credits included in a long-past rate case, but the interim-rate statute does not provide for such a "true up" mechanism.

For the foregoing reasons, the Commission should require Minnesota Power to reflect in its interim revenue requirement four months' worth of revenue from the Basin wholesale contract. Including this revenue would result in an \$8.5 million downward adjustment to interim rates that would replace the \$3.7 million downward adjustment that the OAG recommended in initial comments. However, if the Commission does not require the Company to include the Basin contract revenue in interim rates, the OAG would continue to recommend a \$3.7 million reduction based on exigent circumstances.

Dated: November 18, 2019

Respectfully submitted,

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s/ **Peter G. Scholtz**

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