

**MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147**

Katie Sieben	Chair
Joseph Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
John Tuma	Commissioner

In the Matter of the Application of
Minnesota Power for Authority to Increase
Rates for Electric Service in Minnesota

Docket No. E-015/GR-21-335

**INITIAL COMMENTS OF THE
MINNESOTA DEPARTMENT OF
COMMERCE**

INTRODUCTION

In its March notice, the Commission invited parties to address several issues: (a) whether the record should be reopened, (b) whether to authorize the Department to seek technical assistance, and (c) what procedural process should be used to resolve prepaid pension.¹ The Commission also asked whether this case could be remanded to the Office of Administrative Hearings. For the reasons discussed below, the Commission should reopen the record to make additional findings and authorize the Department to seek technical assistance. Rather than remanding, the Commission should establish initial and reply comment deadlines.

BACKGROUND

In November 2021, Minnesota Power filed this rate case. The Commission referred the matter to the OAH for a contested case in December 2021. Following the contested case, the Commission issued a final order in February 2023. In its decision, the Commission denied Minnesota Power a return on its asserted prepaid pension asset. Minnesota Power appealed.

¹ NOTICE OF COMMENT PERIOD (Mar. 6, 2025) (eDocket No. 20253-216140-01).

In September 2024, the court of appeals held that the Commission must give “due consideration” to a utility’s mandatory contributions to pension plans in determining the utility’s rate base.² The court then reversed and remanded the matter to the Commission to determine whether any of Minnesota Power’s prepaid pension asset should be included in rate base.³ The court added that the Commission could reopen the record.⁴

In March, the Commission issued this comment period inviting interested parties to explain how the Commission should address prepaid pension.⁵

ANALYSIS

I. THE COMMISSION SHOULD REOPEN THE RECORD AND AUTHORIZE THE DEPARTMENT TO SEEK SPECIALIZED TECHNICAL ASSISTANCE.

The record is inadequate to give “due consideration” to prepaid pension. As a result, the Commission should reopen the record and authorize the Department to seek technical assistance.

The court of appeals directed the Commission to give “due consideration” to prepaid pension as an expense of a capital nature. During the contested case, however, the parties principally disputed whether a prepaid pension asset should be recognized at all.⁶ As a result, intervenors did not thoroughly evaluate secondary issues such as the asset size, contributions required by federal law, and possible allocation between ratepayers and shareholders. The Commission needs these types of questions addressed before making a final prepaid pension determination.

² *In re Appl. by Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 12 N.W.3d 477, 493 (Minn. App. 2024)).

³ *Id.* at 494.

⁴ *Id.*

⁵ NOTICE OF COMMENT PERIOD (Mar. 6, 2025) (eDocket No. 20253-216140-01).

⁶ *See, e.g.*, Ex. DOC-2 at 28 (Campbell Direct) (concluding that Minnesota Power had not established the reasonableness of including prepaid pension in rate base).

Given this record gap, the Commission should authorize the Department to seek technical assistance.⁷ The technical consultant could help address, for example, issues such as determining how the prepaid pension asset should be calculated, determining the applicable minimum contribution requirements, or whether Minnesota Power established its prepaid pension asset was funded through investor capital.

II. WHILE THE COMMISSION COULD REMAND TO OAH, THE COMMISSION SHOULD RESOLVE PREPAID PENSION THROUGH NOTICE AND COMMENT.

Besides these issues, the Commission invited parties to consider whether *Surveillance & Integrity Review* prohibited remand to OAH.⁸ While the decision does not preclude remand, prepaid pension can be adequately addressed through notice and comment.

In *Surveillance & Integrity Review*, the supreme court addressed whether the Department of Human Services exceeded its authority under Minn. Stat. § 14.62 by remanding a case to an ALJ.⁹ In 2019, DHS terminated a service provider for noncompliance with program requirements.¹⁰ As part of the matter, an ALJ held a three-day hearing.¹¹ The ALJ then issued a report and recommendation.¹² On the deadline to accept, reject, or modify the ALJ's recommendation, DHS remanded the matter to the ALJ to reweigh and reconsider evidence.¹³ DHS did not modify or reject the ALJ's recommendation in its order remanding the matter to the ALJ.¹⁴ The provider appealed, claiming that the ALJ's report became the final decision when DHS issued a remand. The supreme court agreed, holding under Minn. Stat. § 14.62, subd. 2a, that an ALJ

⁷ Minn. Stat. § 216B.62, subd. 8.

⁸ *In re Surveillance & Integrity Review*, 996 N.W.2d 178 (Minn. 2023) (“*Surveillance & Integrity Review*”).

⁹ *Id.* at 180.

¹⁰ *Id.* at 181.

¹¹ *Id.* at 182.

¹² *Id.*

¹³ *Id.* at 183-84.

¹⁴ *Id.*

report becomes final after 90 days unless the agency: (1) accepts the ALJ's report as the agency's final decision, (2) modifies the ALJ's report, or (3) rejects the ALJ's report.¹⁵ The upshot is that agencies may not remand matters after receiving the ALJ's report following a contested-case proceeding.¹⁶

The procedural posture here is materially different. Unlike in *Surveillance & Integrity Review*, the Commission did make a timely final decision on the ALJ report. Minnesota Power appealed that timely decision. Now, as the court of appeals instructed, the Commission needs to make additional findings and may reopen the record at its discretion. As a result, the Commission may remand the matter to the ALJ if it determines that is the best way to resolve prepaid pension.

While the Commission could remand this matter, notice and comment will be adequate to develop the record. Unlike in a full rate case, there is a discrete issue before the Commission. The ALJ also lacks the Commission's specialized expertise in utility ratemaking and accounting.¹⁷ Additionally, remand would likely prolong final resolution. The Commission should set an initial comments deadline no earlier than Friday, October 24. Reply comments should, in turn, be due no earlier than Friday, December 5. This schedule would provide the Department time to retain a technical consultant. It also would permit interested parties to take consistent prepaid pension positions across the various dockets where it is disputed.

¹⁵ *Id.* at 187.

¹⁶ *See also McNitt v. Minnesota IT Servs.*, 14 N.W.3d 284, 289 (Minn. Ct. App. 2024) (distinguishing between ALJ recommendations for summary disposition and recommendations following a contested-case proceeding).

¹⁷ Minn. Stat. § 216A.03, subd. 1.

CONCLUSION

The Commission should reopen the record to make additional prepaid pension findings, authorize the Department to seek technical assistance, and establish initial and reply comment deadlines.

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Respectfully submitted,

KEITH ELLISON
State of Minnesota
Attorney General

/s/ **Richard Dornfeld**

RICHARD DORNFELD
Assistant Attorney General
Attorney Reg. No. 0401204

445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
(651) 757-1327 (Voice)
(651) 297-1235 (Fax)
richard.dornfeld@ag.state.mn.us

ATTORNEY FOR MINNESOTA
DEPARTMENT OF COMMERCE