

No. A23-0867
No. A23-0871
No. A23-1957

STATE OF MINNESOTA

IN COURT OF APPEALS

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

**RESPONDENT MINNESOTA PUBLIC
UTILITIES COMMISSION'S BRIEF AND ADDEUNDUM**

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no surcharge for the difference. For these reasons, the Commission respectfully declines to adopt the recommendation of the ALJ and will therefore adopt the revenue apportionment proposed by Minnesota Power, reflecting an across-the-board even allocation to all rate classes with the understanding that the Company will not surcharge Residential ratepayers for the difference between interim and final rates.

Id.; GR020839. After final calculations based on all determinations made in the rate case, the authorized final rate increase was estimated at 9.39%.⁶ Index 405; GR022106.

E. Interim Rate Refund

The 9% increase is lower than the 14.23% increase paid by the nonresidential customer classes during the period of interim rates. The interim rate period was from January 1, 2022 to the date final rates were implemented on October 1, 2023. Index 436; GR023369. The Commission directed MP to make a compliance filing detailing how it proposed to handle interim rate refunds necessary based on the final rate determination. Index 378; GR020853-54.

V. PETITIONS FOR RECONSIDERATION/CLARIFICATION

MP and LPI filed petitions for reconsideration of the February 28 Order, a prerequisite to appeal. MP argued for inclusion of Tac Harbor and prepaid pension in rate base. Index 383; GR020928. MP also asked the Commission to “clarify or correct” its order to reflect that sales to ST Paper and Cenovus were a “known and measurable change” to the test year but should be reflected only in calculation of final rates going forward, and not for purposes of the interim rate refund. Index 383; GR020951-52. In other words, MP asked that the interim rate refund be adjusted to reflect that neither entity was operating

⁶ For ease of reference, “9%.”

during the test year of 2022 and MP received only partial interim rate revenue from these customers when they started operations at various times in 2023. *Id.* No party sought reconsideration of the inclusion of sales to ST Paper and Cenovus in the sales forecast.

LPI sought reconsideration on the basis that equal, across-the-board final rates were discriminatorily preferential to the residential class and continued deviation from customer class cost-of-service. Index 382; GR020897. LPI also sought clarification of the interim rate refund calculation, which had not yet been filed by MP. *Id.* at GR020909. LPI asked the Commission to clarify that MP would absorb the loss due to under-recovery from the residential class during the period of interim rates. *Id.* at GR020910-11. LPI expressed its concern that the Company would “somehow seek to make the Company whole by diluting the refund due to nonresidential customers.” *Id.* at GR020910. In its reply to the Company’s filing, LPI took no position on MP’s request for clarification regarding ST Paper and Cenovus. Index 390; GR021051 at fn. 3.

The Commission granted the petitions in part and clarified its order but otherwise denied the petitions for reconsideration in a May 15, 2023 Order. Index 399; GR021177-78. With respect to the ST Paper/Cenovus sales, the Commission found:

Finally, the Commission will clarify that new sales revenues from two large industrial customers are a known and measurable change relative to the Company’s 2022 test year. . . . [T]he Company did not dispute . . . that the two customers were expected to begin continuous operations in early 2023. Additional revenues from these customers lowers the Company’s revenue requirement, justifying treatment of the revenues as a known and measurable change for the purpose of calculating final rates. No party opposed this finding.

Because these two customers were not operating during most of the interim rate period, the Company requested that the Commission clarify that the Company may exclude, when calculating interim rate refunds, sales revenues not collected from these customers during the period of interim rates; the Company also agreed, however, to account for actual revenues received from these customers for service provided during the interim rate period, which is ongoing.

The Commission concurs with the Company that, for purposes of calculating interim rate refunds, it would not be reasonable to impute to the Company revenues not collected during the interim rate period. The Commission will therefore require the Company to include in a compliance filing its interim rate calculation, as described in its clarification request.

Id. at GR021177. In the May 15, 2023 Order the Commission denied LPI's clarification request regarding the interim rates refund as premature. No party sought reconsideration of the May 15 Order.

MP filed its interim rate refund plan on June 14, 2023. Index 405; GR022106. In the refund plan, MP completely segregated residential and nonresidential interim revenues. *Id.* at GR022113. The Company presented calculations reflecting the subtraction of sales revenue from ST Paper and Cenovus. Index 405; GR022116-17 (referring to Cenovus as "Husky"). For 2022, 100 percent of sales revenues from both companies were excluded from final rates, consistent with the customers not operating and not contributing to interim rate revenues. For the first half of 2023, no revenues from ST Paper and 50% of Cenovus revenues were excluded from the final rate figure, corresponding to the companies' resumed operation levels. For the last half of 2023, MP included sales revenues from both customers in the final rate figure. *Id.*

LPI objected to the plan, claiming any exclusion of the two large industrial customers from the final rate figure used for interim rate refunds violated the law. Index 413; GR023119-20.

The Commission approved the Company's filing, stating:

The Company's calculations remove all revenues from the residential class to ensure that there is no subsidy from nonresidential customers to offset the Company's under-collection of interim rates from residential customers.

The Commission is similarly unpersuaded by LPI's arguments that the Company is deliberately attempting to reduce interim rate refunds in a manner inconsistent with Minn. Stat. § 216B.16, subd. 3(c). LPI does not challenge the Company's calculations but rather the Commission's decision authorizing the Company to exclude revenues not collected from ST Paper and Cenovus. But that decision was made in the Commission's May 15, 2023, order, and LPI did not file a request for Commission reconsideration of that decision.

Index 435; GR023354. LPI filed a request for reconsideration of the refund plan approval. Index 441; GR023689. In that petition, LPI presented its calculations for the refund using a final rate figure from a schedule that was not part of the refund plan and did not reflect subtraction of ST Paper or Cenovus. Index 441; GR023701, fn. 53, referencing Index 413; GR023121.

The Commission denied LPI's request for reconsideration of the refund order. Index 450; GR024144. Appeal No. 23-1957 followed and was consolidated with related appeals.

STANDARD OF REVIEW

The limited scope of review of a Commission decision is set by Chapter 14. Minn. Stat. § 216.25. The decision must be affirmed unless the findings, inferences, conclusions, or decisions are:

to a class of customers). As part of the settlement, the ratepayer advocates agreed to not contest a \$1 monthly increase in the customer charge, which offsets the ability-to-pay relief associated with the low-income program expansion. Index 208; GR014555-56. More importantly, the Commission considered the impact of the expansion of the affordability program and the increased monthly charge in its decision. Index 378; GR020840.

The Commission properly evaluated ability to pay, including the expansion of the low-income program and increased customer charge, as part of its balancing cost and non-cost factors in exercise of its quasi-legislative authority. It modified the ALJ's recommended cost allocation *in favor of customers represented by LPI* to assign greater responsibility to the residential class. LPI's arguments do not amount to clear and convincing evidence that compelled the Commission to adopt LPI's cost-based allocation. This Court should affirm the Commission's rate increase allocation.

IV. LPI FAILED TO PRESERVE TWO OF ITS CLAIMED ERRORS FOR APPEAL AND THE CLAIMS SHOULD BE DISMISSED.

LPI seeks review of two Commission rulings that are not appealable. Judicial review of a Commission order or determination is not allowed unless the petitioner applies to the Commission for rehearing. Minn. Stat. § 216B.27, subd. 2; *see also Matter of N. States Power Co.*, 447 N.W.2d 614 (Minn. App. 1989) (holding Chapter 216B “clearly and explicitly” requires application for rehearing; failure bars certiorari appeal). The rehearing request must “set forth specifically” the grounds on which the petitioner contends the decision is unlawful or unreasonable. Minn. Stat. § 216B.27, subd. 2. “No person or

corporation shall in any court urge or rely on any ground not so set forth in the application for rehearing.” *Id.*

A. The Exigent Circumstances Determination is Not Appealable and LPI’s Claim Should Be Dismissed.

In LPI’s Petition for Reconsideration and Clarification of the final rate order, LPI did not argue that the exigent circumstances determination should be reconsidered. Index 382; GR 020897-911. At most, in a single sentence LPI referred to an earlier letter it had filed that questioned the exigent circumstances determination as to the residential class only. *Id.* at GR020909. This offhand reference in a 19-page document in no way satisfies the statutory requirement to state with specificity the grounds on which the order is unlawful or unreasonable. LPI did not ask the Commission to reconsider its exigent circumstances finding. Accordingly, LPI’s appeal on this issue should be dismissed.

B. The Interim Rate Refund Is Not Appealable and LPI’s Claim Should Be Dismissed.

LPI’s claimed error in the interim rate refund is based on the exclusion of ST Paper and Cenovus from sales revenue for purposes of determining the interim rate refund. (LPI Brief, p. 37.) That decision was made in the Commission’s May 15, 2023 Order. Index 399; GR 021177. In that Order the Commission agreed with the Company that it would be unreasonable to impute revenue from ST Paper and Cenovus during the period of interim rates when these customers were not yet operating. *Id.* at GR021777. Accordingly, for purposes of calculating the interim rate refund the Commission authorized MP to exclude sales revenue not received from ST Paper and Cenovus during the period of interim rates. *Id.* As is standard in rate cases, the Commission ordered the Company to make a

compliance filing showing its interim rate refund calculation. *Id.* LPI did not seek reconsideration of the May 15 Order.

In anticipation of this objection, LPI offers only indirect and ineffectual arguments in its principal brief. First, LPI claims that because it previously sought reconsideration of the February 28 Order, it was precluded from petitioning for reconsideration of the May 15 Order. (LPI Brief, p. 12). While the Commission may not *grant* more than one rehearing request, that limit “shall not be construed to prevent any party from filing a new application.” Minn. Stat. § 216B.27, subd. 3. In addition, Commission rule precludes only a second petition “upon the same grounds” as a former petition. Minn. R. 7829.3000, subp. 7. In LPI’s first (March 20, 2023) rehearing request it raised only the issue of customer class allocation. LPI made no mention of ST Paper or Cenovus in its petition for reconsideration. Index 382; GR020894-912.¹⁹ Because LPI’s March 20, 2023 petition for reconsideration raised different grounds than the exclusion of ST Paper and Cenovus revenues from the interim rate refund calculation, Minnesota Rule 7829.3000, subd. 7, would not have barred LPI from complying with the rule that requires a timely petition for reconsideration before bringing an appeal to this Court.

LPI’s second ineffectual argument is its claim that its calculation “necessarily” gives effect to the May 15 Order because it accepts MP’s figures for the amount collected during the interim rate period. (LPI Brief, p. 40.) However, the adjustment the

¹⁹ Moreover, LPI “took no position” on the Company’s request to exclude ST Paper and Cenovus for purposes of the refund calculation. Index 390; GR021051 at n.3.

judicial and partly legislative rate base conclusions are supported by substantial evidence in the record and within the Commission's discretion. The Court should affirm these rulings.

The Court should also affirm the Commission's exercise of its purely legislative authority to allocate the rate increase equally across customer classes. Finally, the Court should dismiss LPI's appeal of Commission rulings that are not appealable due to LPI's failure to seek reconsideration.

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Respectfully submitted,

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