BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
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In the Matter of the Review of 2011-2012 Annual Automatic Adjustment Reports	PUC Docket No. E999/AA-12-757
In the Matter of the Review of 2010-2011 Annual Automatic Adjustment Reports	PUC Docket No. E999/AA-11-792

REPLY COMMENT

The Minnesota Large Industrial Group ("MLIG"), a consortium of large industrial customers in the State of Minnesota spanning several utilities and consuming more than 6 billion kWh of electricity each year, submits the following reply comment.

I. INTRODUCTION

On August 31, 2012, Minnesota Power, Interstate Power and Light Company ("IPL"), Northern States Power d/b/a Xcel Energy ("NSP"), Otter Tail Power Company ("OTP"), and Dakota Electric Association ("Dakota Electric") (collectively, the "Utilities"), submitted their respective Annual Automatic Adjustment ("AAA") reports. The Minnesota Public Utilities Commission provided a few extensions to the commenting deadlines, with initial comment due on June 5, 2006, for the 2011-2012 AAA reports. On that date, the Minnesota Department of Commerce – Division of Energy Resources (the "Department") submitted its review of the Utilities' 2011-2012 AAA reports (the "Department's Review"). In addition to providing a detailed overview addressing compliance filings, evaluation of the Utilities' costs, effects of the MISO Day 1 and Day 2 markets on Minnesota ratepayers, the Department submitted a revised proposal for recovery under what is traditionally known as the fuel clause adjustment, or "FCA." The Commission has twice extended the time for submitting replies to the Department's Review, most recently issuing a notice (the "Notice") establishing September 20, 2013, as the due date for reply comments. On August 26, 2013, NSP submitted its reply comment ("NSP's Reply Comment"). MLIG submits this reply comment in response to the Notice and NSP's Reply

Comment. MLIG also responds to the Department's requests for the Commission to convene a meeting of stakeholders, which communications were filed in the 2010-2011 AAA docket.

II. ANALYSIS

A. Overview

Under Minnesota law, the Commission may permit utilities to file for approval of the automatic adjustment of rates for energy and emission control costs. Specifically, Minnesota law states:

> the Commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in:
> (1) federally regulated wholesale rates for energy delivered through interstate facilities;
> (2) direct costs for natural gas delivered;
> (3) costs for fuel used in generation of electricity or the manufacture of gas; or
> (4) prudent costs incurred by a public utility for sorbents, reagents, or chemicals used to control emissions from an electric generation facility, provided that these costs are not recovered elsewhere in rates. The utility must track and report annually the volumes and costs of sorbents, reagents, or chemicals using separate accounts by generating plants.[1]

Commission rules spell out the purpose of the fuel adjustment clause and govern application of this statutory provision. The purpose of the rules is "to enable regulated gas and electric utilities to adjust rates to reflect changes in the cost of energy delivered to customers from those costs authorized by the commission in the utility's most recent general rate case."[2]

The purpose is not, however, to provide actual recovery for fuel and purchased energy costs. To be sure, the calculation for any adjustment precludes recovery of actual costs via the defined period of recovery. The rules state that "The adjustment per kWh is the sum of the current period cost of energy purchased and cost of fuel consumed per kWh less the base electric cost per kWh."[3] The term "current period" is defined as "the most recent two-month moving

[1] Minn. Stat. § 216B.16 subd. 7.
[2] Minn. R. 7825.2390.
[3] Minn. R. 7825.2600 subp. 2.

average used by electric utilities in computing an automatic adjustment of charges."[4] Also, "The amount of the billing period adjustment to charges must be determined by extending kilowatt-hour sales in the billing period by an adjustment per kWh."[5] Given these definitions, the current method of calculation does not entitle the Utilities to recover actual fuel and purchased energy costs.

But not all of the Utilities use the backward looking calculation contemplated by applicable rules. In 2000, NSP petitioned for and obtained a variance from the rules governing automatic adjustment for fuel costs.[6] Claiming that customers would receive better price signals with a forward looking fuel clause, Xcel requested the following (i) a revision allowing for the monthly FCA to be based on a one-month ahead forecast of sales and energy costs; (ii) a revision allowing for a monthly FCA true-up factor to be included in monthly FCA filing; and (iii) a revision allowing the monthly FCA to be prorated based on the number of days in each billing cycle.[7] With a slight modification, the Commission approved NSP's request on June 27, 2000.[8] NSP is the only electric utility in Minnesota using the forward looking method.

In its 2008 rate case, Minnesota Power proposed to modify its fuel adjustment clause method consistent with NSP's method described above. Minnesota power proposed a new methodology that projected fuel costs and MWh for the current billing month with a true-up against actual costs occurring two months after the billing month.[9] A number of parties objected, including the Large Power Intervenors.[10] These objections were largely focused on Minnesota Power's claimed impacts of the proposed change. Minnesota Power asserted that there would be roughly $3.1 million in stranded costs associated with a change to a forward looking fuel adjustment clause and an $18.6 million charge associated with the update to the base cost of fuel.[11] Ultimately, these issues were resolved via settlement, whereby Minnesota Power withdrew the requests for a forward looking fuel clause and update to the base cost of fuel.[12]

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[4] Minn. R. 7825.2400 subp. 13.
[5] Minn. R. 7825.2600 subp. 1.
[6] *In the Matter of the Petition of Northern States Power Company to Amend the Terms of Its Electric Fuel Clause Adjustment*, Docket No. E-002/M-00-420, NSP PETITION (April 4, 2000).
[7] *Id.* at 7-8.
[8] *In the Matter of the Petition of Northern States Power Company to Amend the Terms of Its Electric Fuel Clause Adjustment*, Docket No. E-002/M-00-420, ORDER (June 24, 2000).
[9] *See In re Minnesota Power*, Docket No. E-015/GR-08-415, DIRECT TESTIMONY OF PETE SEELING, pg. 16.
[10] *See In re Minnesota Power*, Docket No. E-015/GR-08-415, DIRECT TESTIMONY OF JAMES T. SELECKY.
[11] *See In re Minnesota Power*, Docket No. E-015/GR-08-415, DIRECT TESTIMONY OF PETE SEELING, pg. 16, pg. 19-

Regardless of whether the FCA is forward or backward looking, the Utilities' (including NSP) cost recovery is not precise.[13] More importantly, utilities have no incentive to control fuel and purchased energy costs. Despite the utilities' efforts, purchased energy for what are arguably unreasonable forced outages will be built into the FCA for a specific time period. And the Commission appears hesitant, even where there is evidence that a portion of the utility's fuel and purchased energy costs are unjust and unreasonable, to require a refund of that portion of fuel and purchased energy costs. Given these shortcomings, the proposal in the Department's Review is a good starting point for discussion of this critical issue.

B. The Overarching Concerns Raised by the Department Must be Addressed in a Timely Manner

In 2012, the Utilities recovered over $1.2 billion in their respective FCAs.[14] These significant figures, combined with the perverse incentive of FCA cost recovery, changes in the MISO energy market, PPA structure, and costs due to utilities' mistakes, have lead the Department to the conclusion that a change is necessary. MLIG agrees. The Department states:

> While the Department is open to any reasonable proposal by other parties, the Department recommends that, rather than allowing utilities to recover all changes in energy costs on a month-to-month basis, recovery of energy costs should be fixed in a rate case, with no adjustment between rate cases, at the IOU's average energy costs ($/kWh) over the previous three years before a rate case is filed. While this approach could set the recovery of energy costs at a single rate throughout the year, it would be more appropriate to set the energy rates for each month of the year based on average costs for that month in the past three years, so that rates could provide better price signals to customers to reduce energy during peak periods. This approach would give the IOUs clear incentives in between rate cases to minimize their total cost of doing business. That is, not only would utilities have an incentive to minimize

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20. A similar issue existed with respect to NSP's transition, but that issue was resolved via agreement between the Department and NSP, wherein NSP netted the transition costs against a refund due customers. *In the Matter of the Petition of Northern States Power Company to Amend the Terms of Its Electric Fuel Clause Adjustment*, Docket No. E-002/M-00-420, ORDER (November 1, 2000).

[12] *In re Minnesota Power*, Docket No. E-015/GR-08-415, STIPULATION AND SETTLEMENT AGREEMENT, Ex. 107 (November 18, 2008).

[13] *See The Department's Review*, pg. 22, Table 4.

[14] *The Department's Review*, pg. 22-24.

> capital and other costs recovered in base rates, but they would also have the same incentive to minimize energy costs.[15]

A likely complaint of the Utilities to this concept, and one raised in NSP's Reply Comment, is that the Department's proposal is arbitrary and could lead to under-collection. The same could be said about the current methodologies employed by NSP and the other Utilities.

But MLIG is sensitive to any revision to the FCA that would lead to a greater likelihood of under-recovery than the present methodology. MLIG agrees with the sentiment in NSP's Reply Comment that any revision to the FCA "should not create 'winners' and 'losers' based on conditions utilities cannot influence."[16] MLIG does not, however, believe that the list of principles in NSP's Reply Comment adequately addresses concerns from the ratepayers' perspective.[17] NSP's list of principles fails to include reference to a penalty for undesired actions and outcomes. More importantly, NSP's list does not include reference to the Utilities' burden of proving rates are just and reasonable.

C. The Commission Should Consider Fixing All or a Portion of the Utilities' Fuel and Purchased Energy Costs During a Rate Proceeding

As the Commission is well aware, "Every rate made, demanded or received by a public utility…shall be just and reasonable…Any doubt as to reasonableness should be resolved in favor of the consumer."[18] Utilities bear the burden of demonstrating rate proposals are just and reasonable.[19] The Minnesota Supreme Court has expanded upon this burden and stated "by merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating it is just and reasonable that the ratepayers bear the costs of those expenses."[20] But it appears that, with respect to fuel and purchased energy costs, the charges imposed by the Utilities are assumed by the Commission to be just and reasonable unless demonstrated to the contrary by clear and convincing evidence. With respect to the 2010-2011 AAA docket, the Commission found:

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[15] *Id*. at 21.
[16] *NSP Reply Comment*, pg. 23.
[17] *Id*.
[18] MINN. STAT. § 216B.03.
[19] MINN. STAT. § 216B.16 subd. 4 ("The burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change.").
[20] *In re Northern States Power Co.*, 416 N.W.2d 719, 722-23 (Minn. 1987).

> The Department *investigated in great detail forced plant outages* experienced by the electric utilities, *and concluded that several unplanned outages* experienced by Xcel, Minnesota Power, and Interstate *were the product of inadequate or improper operating or maintenance practices and therefore unreasonable*. Certain other outages, in the Department's view, were the result of preventable employee error.[21]

Despite the Department's detailed and extensive effort, the Commission ultimately determined that the docket did not contain "detail sufficient for the Commission to resolve disputes of fact necessary to finally determine the prudence of the utilities' plant operation and maintenance."[22] It is difficult to understand what additional information could have been produced in the Department's analysis. Furthermore, it is hard to reconcile the Commission's decision with the statutory directive to resolve doubts in favor of the ratepayer. MLIG sincerely hopes the Commission understands these frustrations from the ratepayer's perspective.

But rather than debate prior decisions, MLIG believes effort should focus on designing a revised FCA mechanism to generally address concerns from the ratepayers' perspective. MLIG agrees with the intent of the Department's proposal - the Utilities should have some "skin in the game" on fuel and purchased energy costs. Nonetheless, slight modifications to the Department's proposal may be necessary to assuage the Utilities' objections. One potential modification would be to allow continued adjustments for fuel costs while fixing the level of purchased energy costs. Another potential modification would be for parties to discuss and agree upon an appropriate method (other than a three-year historical average) of arriving at representative fuel and/or purchased energy costs for the rate case test year. In any case, the parties could also clarify that if, for some reason, an unplanned and extended outage at a generating facility occurs and the utility purchases much more energy from the market than planned, then the Utilities would be free to submit a filing seeking recovery. MLIG emphasizes that the purpose of fixing all or a portion of FCA costs in a rate case should be to force the Utilities to justify as reasonable any costs in excess of the fixed amount, and not to force the Utilities into a position of constant under-collection. Ratepayers should not bear the burden of

[21] *In the Matter of the Review of the 2010 - 2011 Annual Automatic Adjustment Reports for All Electric Utilities*, Docket No. E-999/AA-11-792, ORDER ACTING ON ELECTRIC UTILITIES' ANNUAL REPORTS, REQUIRING REFUND OF CERTAIN CURTAILMENT COSTS, AND REQUIRING ADDITIONAL FILINGS, pg. 4(August 16, 2013) (emphasis added).
[22] *Id*. at 5.

questioning recovery of fuel and purchased energy costs in order to demand a refund for certain unreasonable costs after those costs have been recovered. The current method, which places this precise burden on ratepayers, needs to be revisited.

D. MLIG is Willing to Meet with the Commission, Department, and Other Stakeholders Regarding the FCA

In a recent communication 2010-2011 AAA docket, the Department requested that the Commission convene a meeting with all interested parties to discuss proper operation of the FCA.[23] The Department followed up this request with a letter clarifying the purpose of the proposed FCA meeting and setting forth a list of questions for the Commission to resolve.[24] MLIG agrees that such a meeting would be beneficial and help guide the parties' discussions and proposals in the 2011-2012 AAA docket. MLIG looks forward to participating in that discussion.

III. CONCLUSION

MLIG appreciates the Department's efforts in the recent AAA dockets and for bringing this important issue to the Commission's attention. MLIG echoes the Department's request for the Commission to convene a meeting in the near future. MLIG looks forward to engaging stakeholders and Utilities in this process. Depending on the Commission's position in the FCA meeting, MLIG reserves the right to modify and/or clarify its suggested revisions to the FCA mechanism.

[23] *In the Matter of the Review of the 2010 - 2011 Annual Automatic Adjustment Reports for All Electric Utilities*, Docket No. E-999/AA-11-792, DEPARTMENT LETTER, pg. 3 (September 5, 2013).
[24] *In the Matter of the Review of the 2010 - 2011 Annual Automatic Adjustment Reports for All Electric Utilities*, Docket No. E-999/AA-11-792, DEPARTMENT LETTER, pg. 3 (September 16, 2013).

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Respectfully submitted,

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