



January 12, 2015

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**VIA E-FILING AND U.S. MAIL**

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

Re: In the Matter of Great River Energy's 2014 Integrated Resource Plan (IRP)  
MPUC Docket No. ET2/RP-14-813

Dear Mr. Wolf:

Enclosed please find Al-Corn Clean Fuel and Heartland Corn Products' Initial Comments in Response to Great River Energy's Objection to Intervention in the above-referenced docket. These documents have been filed with the E-Docket system and served on the attached service list. Also enclosed is our Affidavit of Service.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

/s/ Joseph M. Windler

Joseph M. Windler

Enclosures

cc: Service List

9897341v1



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**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 Seventh Place East, Suite 350  
St. Paul, Minnesota 55101-2147

Beverly Jones Heydinger  
Dr. David C. Boyd  
Nancy Lange  
Dan Lipschultz  
Betsy L. Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Great River Energy's 2014  
Integrated Resource Plan (IRP)

MPUC Docket No. ET2/RP-14-813

**AL-CORN CLEAN FUEL AND HEARTLAND CORN PRODUCTS' INITIAL  
COMMENTS IN RESPONSE TO GREAT RIVER ENERGY'S OBJECTION TO  
INTERVENTION**

Al-Corn Clean Fuel ("Al-Corn") and Heartland Corn Products ("Heartland") (collectively, "Petitioners") hereby respond to Great River Energy's ("GRE") Objection ("GRE's Objection") to Petitioners' Petition to Intervene ("Petition").

Objections to intervene are exceedingly rare. And it is even more rare for a utility to object to the intervention of two of its end-users.

GRE's Objection is clearly the result of Petitioners' participation in GRE's last Resource Plan, which was rejected by the Commission, and Petitioners' continuing concerns with GRE's filing in this docket. These continuing concerns are not "general" concerns, but rather the unique interests and concerns of GRE's large industrial end-users that are clearly not represented by any other party to this proceeding. In so doing, Petitioners will be able to provide relevant information and an independent perspective, all of which will assist the Commission in its consideration of this matter. Furthermore, Petitioners' participation in this matter will not disadvantage or burden any other party to this proceeding. Accordingly, Petitioners request that their Petition be granted.

## ARGUMENT

Pursuant to subdivision 2 of Rule 7829.0800 of the Minnesota Rules, a petition to intervene **must be granted**:

upon the showing that . . . the outcome of the proceeding will bind or affect the persons with respect to an interest peculiar to that person as distinguished from interests common to the public or other ratepayers in general, or the person's interests are not adequately represented by one or more of the other parties participating in this case.

Minn. R. 7829.0800, subp. 2.

As stated in Petitioners' Petition to Intervene, the Commission's review and consideration of GRE's Integrated Resource Plan ("IRP") will significantly affect their peculiar interests. Petitioners have interests different from the public at large, and certainly different from any other participants or parties in this case, because they are large ethanol plants that have constant, high demand. In sharp contrast, the demand of most ratepayers is influenced by seasonal and time-of-day fluctuations. Petitioners have reason to believe that GRE, and its Resource Plan, fail to take into account these important distinctions. As such, Petitioners have peculiar interests from those of the public or general ratepayers.

Further, Petitioners' interests are not being adequately represented by one or more parties participating in this case. On this issue, GRE cherry-picks a quote from a nearly twenty-year-old Commission decision for the proposition that the Department of Commerce can properly represent concerns "common to the general ratepayers." GRE's argument is misplaced as Petitioners are anything but "normal ratepayers."<sup>1</sup> Indeed, contrary to GRE's position, the Department has not taken the position that it will, or even can, represent the interests of

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<sup>1</sup> GRE's Objection further elevates form over substance, as it is undisputed that Petitioners can fully participate in this proceeding regardless of whether its Petition to Intervene is granted.

Petitioners. While the Department may be representing the interests of “general ratepayers,” it is not representing the peculiar interests of Petitioners, or high-demand industrial customers.

GRE’s argument that Petitioners are not “bound or affected by the outcome of this proceeding with respect to the costs they pay for their electricity” is both nonsensical and insulting to the resource planning process. The Commission has express authority from the Minnesota Legislature to review and approve, or disapprove, a Resource Plan. Minn. Stat. § 216B.2422, subd. 2. GRE is required by Minnesota law to deliver reliable services “at-cost.” The Commission’s rules further expressly provide that “[r]esource options and resource plans must be evaluated on their ability to: . . . (b) **keep the customers’ bills and the utility’s rates as low as practicable, given regulatory and other constraints.** . . .” Minn. R. 7843.0500, subp. 3 (emphasis added). Petitioners have a reasonable belief that GRE has failed to do so. Simply put, the Commission’s review and analysis of GRE’s proposed Resource Plan directly and significantly impacts the rates that are charged to Petitioners.<sup>2</sup> Petitioners also believe that GRE’s Resource Plan fails to explain how GRE intends to enhance its ability to respond to changes in the financial, social and technological factors affecting its operations and limit the risk of adverse effects on GRE and its customers from financial, social, and technological factors that GRE cannot control, in accordance with subpart 3(d) and (e) of section 7843.0500 of the Minnesota Rules. As explained above, GRE’s failure to adequately provide reliable services “at-cost” uniquely affects Petitioners.

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<sup>2</sup> While GRE is correct that Petitioners are not direct customers of GRE, it is disingenuous to suggest that the price that GRE charges Petitioners’ distribution cooperatives does not impact the price that such distribution cooperatives charge Petitioners. Further, GRE’s argument that “Petitioners have come to the wrong forum” because “[t]his is not a rate case” is similarly disingenuous. As GRE and this Commission are well aware, GRE has affirmatively chosen not to participate in the rate case process; instead, setting its rates behind closed doors. As such, this proceeding is Petitioners only venue (apart from filing a civil lawsuit) to participate or challenge GRE’s behavior.



Further, the Commission regularly allows large industrial customers—such as Petitioners—to participate in resource planning proceedings.<sup>3</sup> Indeed, “[t]he Commission has traditionally taken an inclusive approach to intervention. . . .” *Re: New Rules Governing Practice and Procedure*, Docket No. U-999/R-86-147, 1992 WL 2214323 (Minn. P.U.C., June 11, 1992). As such, Petitioners’ Petition to Intervene must be granted pursuant to the Minnesota Rules.

Lastly, the appropriateness of GRE’s intervention in this proceeding is evidenced by Petitioners’ intervention in GRE’s 2012 Integrated Resources Plan (Docket No. ET2/RP-12-1114) (“GRE 2012 Resource Plan Proceeding”). Indeed, GRE did not object to Petitioners’ intervention in the GRE 2012 Resource Plan Proceeding. Now, after the GRE 2012 Resource Plan Proceeding and Petitioner’s participating in that proceeding, which resulted in the Commission’s rejection of GRE’s proposed resource plan, GRE objects to Petitioners’ intervention.<sup>4</sup> Much to GRE management’s dismay, its status as a generation and transmission cooperative does not grant it unassailable dictatorship status. Rather, it still must answer to this Commission, its members, and its distribution cooperatives’ members. Based on the foregoing, it is clear that GRE’s Objection is baseless, and Petitioners’ Petition to Intervene should be granted.

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<sup>3</sup> See Petitioners’ intervention in *In the Matter of Great River Energy’s 2012 Integrated Resources Plan*, Docket No. ET2/RP-12-1114; see also the Large Power Intervenors’ intervention in *In the Matter of Minnesota Power’s Application for Approval of its 2013-2027 Resource Plan*, Docket No. E015/RP-13-53 & the Commercial Group’s intervention in *In the Matter of the Application of Northern States Power Co. d/b/a/ Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-10-971.

<sup>4</sup> GRE’s aggression towards Petitioners has not been limited to this forum. Indeed, after Petitioners inquired regarding a number of issues related to GRE’s high rates, management, and governance, GRE responded by threatening a defamation lawsuit and sanctions. (*See attached Exhibit A*)

Dated: January 12, 2015

Respectfully submitted,

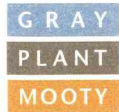
**WINTHROP & WEINSTINE, P.A.**

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**Attorneys for Al-Corn Clean Fuel and  
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## EXHIBIT A



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December 15, 2014

Mr. David Aafedt  
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**Via U.S. Mail and  
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[mmcbride@winthrop.com](mailto:mmcbride@winthrop.com)**

Re: Great River Energy

Dear Counsel:

We write to put you on notice of the consequences your clients Al-Corn Clean Fuel and Heartland Corn Products risk by their campaign to wrongfully attack and defame Great River Energy (“GRE”) and its member cooperatives. When we contacted you and proposed meetings to discuss your August 27, 2014 letters to GRE’s members Brown County REA, McLeod Co-op Power Association and Steele-Waseca Cooperative Electric, you led us to believe your clients were interested in meeting, saying you would be back to us “soon” with meeting dates. Your recent filing of a Petition to Intervene in GRE’s Integrated Resource Plan docket before the Minnesota Public Utilities Commission, which petition contains unsupported and defamatory statements about GRE and its members, has left us little choice but to communicate in writing.

Your August 27 letters requesting that Brown County REA, McLeod and Steele-Waseca sue GRE and its board of directors based on ten allegations against GRE have set in motion an expensive and wasteful process. The letters have forced GRE and the three cooperatives to engage counsel, incur significant legal fees, and expend significant staff time and energy.

We are certain that, when the three distribution cooperatives go through the process to evaluate the claims you made against GRE, they will determine, as GRE has, that the claims are baseless, and decide not to sue GRE or its board. GRE responded to your letters with letters dated September 22, 2014 to each of Brown County REA, McLeod and Steele-Waseca, which contain detailed rebuttals of all ten of your claims. GRE’s letters demonstrate that the actions of GRE and its board of directors have in all cases been lawful corporate actions well within their proper business judgment.

Although we are confident in the eventual outcome, the process Brown County REA, McLeod and Steele-Waseca has undertaken may be very expensive, potentially in the hundreds of thousands of dollars. GRE will also incur substantial costs defending itself against the allegations and providing information to the three distribution cooperatives. Because GRE and its member distribution cooperatives operate on a not-for-profit basis and must pass on all of their costs to their members in the form of electric rates, it is the 650,000 member consumers in

Mr. David Aafedt  
Mr. Matthew R. McBride  
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the GRE system, including your clients, that will pay the costs for your reckless allegations, presumably the opposite of what your clients desire.

If your clients sue GRE directly, they will be taking a very significant, unwarranted risk with the valuable assets of their owners. These risks include:

1. The costs and consequences of an expensive, unsuccessful lawsuit. GRE will vigorously defend every claim against it.
2. Sanctions, including GRE's and its members' legal fees and costs, pursuant to Rule 11 of the Minnesota Rules of Civil Procedure and Minnesota Statutes Section 549.211. To the extent that the Complaint repeats the same false factual statements contained in your letters, GRE will file pleadings detailing not only that the statements are demonstrably false, but also that your clients knew they were false or failed to conduct an adequate investigation of the actual facts made available to them by GRE. In addition, at the beginning of the case, GRE will lay out detailed evidence demonstrating that all of the actions GRE and its board have taken were proper actions based on the business judgment of GRE and its board. GRE's September 22 letters effectively rebutted all of your clients' accusations. If, notwithstanding the evidence to the contrary, your clients persist in pursuing such claims, sanctions will be in order.
3. Counterclaims. Although your clients' wrongful actions have created actionable claims against your clients by GRE, GRE has refrained from commencing suit on those claims. If sued, however, GRE will make counterclaims against your clients for causing GRE to incur substantial costs to defend false allegations made without any meaningful investigation, and for the harm to GRE's business reputation due to defamatory statements. Those statements include the false claims in the August 27 letters that GRE has the highest rates in the state and the statement in your Petition to Intervene that "GRE and its distribution cooperatives pay little attention to their duty to provide its [sic] members with 'at-cost' or 'at-least-cost' [sic] while complying with their statutory and legal obligations." Further evidence supporting GRE's claims for sanctions and its counterclaims is contained in the attached summary of actions by your clients.

Your clients risk much in proceeding down the path to litigation, and any possible rewards do not justify that risk. In fact, the path is counterproductive. The tactic of forcing the three distribution cooperatives to consider whether to sue GRE - and to issue a threat directly against them in a footnote to the August 27 letters - is the wrong way to address whatever grievances your clients claim. The right way to address issues is by working within the electric cooperative system. Toward that end, we propose a meeting at the highest levels of our respective clients' organizations. GRE's board chair and CEO are prepared to meet with their counterparts at your clients' organizations, together with counsel and support staff. While we have not talked to

Mr. David Aafedt  
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counsel for the three distribution cooperatives, we suggest their comparable officials also attend. GRE is willing to discuss anything that would be conducive to airing the issues and arriving at constructive solutions. GRE is prepared to talk openly about your clients' concerns, GRE's strategic plan, its response to the challenges of the utility industry, and how GRE's board works on behalf of GRE's members to keep rates as low as practicable.

We will await your response.

Very truly yours,

GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.

By Charles K. Maier tss  
Charles K. Maier

CKM/tll

cc: Mr. Thomas Keller  
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Mr. Larry Shapiro  
Ms. Kate Hibbard