

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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St. Paul, MN 55101-2147

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

MPUC Docket Nos. E-015/GR-21-335,
E-015/GR-23-155
OAH Docket No. 5-2500-38008

REPLY COMMENT

I. INTRODUCTION

Pursuant to the Minnesota Public Utilities Commission’s (“MPUC” or “Commission”) March 6, 2025, Notice of Comment Period (“Notice”), the Large Power Intervenors (“LPI”) submit this Reply Comment (“LPI Reply Comment”) to reiterate its request that the Commission supplement its decision to exclude prepaid pension asset (“PPA”) from Minnesota Power’s (“MP” or “the Company”) rate base, without reopening the record in this proceeding, via the Notice and Comment process.¹ Despite the Administrative Law Judge’s conclusion that the Company’s PPA was appropriately included in rate base, which ignored substantial record evidence to the contrary, the Commission should rely on the fulsome record to uphold its determination that Minnesota Power failed to carry its burden to demonstrate investor capital alone funded its PPA.

II. COMMENT

Minnesota Statute § 216.27 does not require the record to be reopened, and similarly, the Court of Appeals stated the Commission could reopen the record at its discretion. The Commission should apply its discretion to review and supplement its decision without reopening the record to allow the Company an opportunity to present new arguments.

¹ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket Nos. E-015/GR-21-335, E-015/GR-23-155, Notice of Comment Period (March 6, 2025) (eDocket No. 20253-216140-01) (establishing April 22, 2025, as the due date for reply comments).

A. The Commission Should Rely on Existing Record Evidence to Support Its Decision Rejecting Prepaid Pension Asset in Minnesota Power’s Rate Base, Despite the ALJ’s Erroneous Recommendation to the Contrary.

LPI believes the Commission should not reopen the record in this docket and instead supplement its underlying decision to exclude MP’s PPA from rate base using existing evidence.² Fundamental to a finding that a utility may recover PPA through its rate base is the threshold question of whether shareholders alone fund the PPA.³ Where such a determination can be made, a utility can recover PPA in rate base.⁴ MP has failed to make such a determination,⁵ despite the Administrative Law Judge’s Findings of Fact, Conclusions or Law, and Recommendations (“Recommendations”) to the contrary.⁶ In its initial comment, Minnesota Power attempts to leverage the Recommendations, pointing to the alleged “detailed record” that supported the Recommendations, specifically asserting that “[t]he ALJ also found that LPI Witness Gorman’s own testimony showed that customers get the benefit of negative pension expense being embedded in rates.”⁷ In support of this assertion, the Minnesota Power Comment cites to pg. 56 of the Recommendations, and specifically footnote 361. LPI is compelled to respond to the Minnesota Power Comment on these points.

² *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket Nos. E-015/GR-21-335, Findings of Fact, Conclusions, and Order at 9 (February 28, 2023) (eDocket No. 20232-193486-01) (concluding that “Minnesota Power has failed to satisfy its burden to show that the prepaid pension asset is entirely funded by shareholders and not partially by market returns.”)

³ Ex. LPI-1 at 10:17-12:6 (Gorman Direct); Ex. LPI-2 at 3:12-21 (Gorman Surrebuttal).

⁴ E.g., *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, PUC Docket No. E-015/GR-16-664, Findings of Fact, Conclusions, and Order at 17 (Mar. 12, 2018) (eDocket No. 20183-140963-01) (“MP 2016 Rate Case Order”).

⁵ Minnesota Power’s exhibits failed to show its PPA was funded by investor capital – rather, it showed pension trust returns and customers funded the PPA. Ex. LPI-1 at 14:14-16 (Gorman Direct).

⁶ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket Nos. E-015/GR-21-335, OAH 5-2500-38008, Findings of Fact, Conclusions of Law, and Recommendations at 61 (September 1, 2022) (eDocket No. 20229-188786-01) (“Recommendations”).

⁷ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket Nos. E-015/GR-21-335, Initial Comment of Minnesota Power (April 7, 2025) (eDocket No. 20254-217339-01) (“Minnesota Power Comment”).

On review of the evidence provided by MP regarding creation of its PPA, LPI's witness Mr. Gorman concluded that "there is clear evidence that approximately 28% of the PPA was created by excess earnings on the pension trust and negative pension expense, and was not created due to cash contributions to the pension trust funded by investor capital."⁸ In demonstrating MP's PPA was indeed funded by ratepayers, Mr. Gorman testified that between 1998 and 2003, the Company's pension expense ranged from negative \$2.9 million to \$28.7 million; however, during this period the Company made no contributions to the pension trust.⁹ LPI's evidence makes clear MP's failure to demonstrate shareholders alone funded its PPA.

Contrary to that clear evidence, the ALJ concluded that MP's PPA was properly incorporated in rate base because it was funded by shareholders.¹⁰ The ALJ's Recommendations neglected to meaningfully account for LPI's clear evidence showing the Company's PPA derived from various funding streams besides investor capital. Despite acknowledging Mr. Gorman's testimony that "approximately 28 percent of the prepaid pension asset was not created by shareholder contributions but was created by excess earnings on the pension trust and negative pension expense,"¹¹ the Recommendations seemingly accepted at face value MP's contention that "the pension plan ha[s] been funded by ALLETE, either with cash or ALLETE common stock, and not by customers."¹² Further, the ALJ concluded that,

to exclude the asset because it is impractical or impossible to separate market returns from the prepaid amount attributed to the Company's contributions from that attributable to customer contributions, is not sufficient reason to exclude the prepaid pension asset from rate base. The entire prepaid pension asset that the

⁸ Ex. LPI-1 at 16:9-11(Gorman Direct). *See also* LPI-2 at 11:16-12:20 (Gorman Surrebuttal).

⁹ Ex. LPI-2 at 12:3-7 (Gorman Surrebuttal).

¹⁰ Ex. LPI-1 at 10:17-12:6 (Gorman Direct); Ex. LPI-2 at 3:12-21 (Gorman Surrebuttal); *see* LPI Reply Br. at 15-20.

¹¹ Recommendations at 51 (internal quotations omitted).

¹² *Id.* at 55.

Company seeks to include in rate base resulted from investor contributions.¹³

Unfortunately, that conclusion (1) ignores Commission precedent finding that where such a distinction in funding cannot be made, PPA should not be included in rate base, and (2) substantial evidence presented by LPI, as well as other intervenors (i.e., DOC), demonstrating sources other than investor contributions fund the Company's PPA. The Commission itself has acknowledged that "it would be impractical, if not impossible, to equitably separate the prepaid amount attributable solely to Minnesota Power's contributions from that attributable to ratepayer contributions and market returns."¹⁴

Even more troubling is the ALJ's statement that "Mr. Gorman has proof in his own testimony that negative pension expense has been used to set rates..."¹⁵ The ALJ's footnote 361 tracks an argument the Company made in briefing (and mirrors footnote 360 in the Company's Proposed Findings). It claimed that Mr. Gorman's testimony demonstrated that negative pension expense has been used to set rates in the years 2008 and 2009.¹⁶ The ALJ included this statement without acknowledging and certainly not addressing that Mr. Gorman provided four substantive justifications to disprove this argument. First, citing the Commission's interim rate refund order for that case, Mr. Gorman testified that final rates were less than interim rates justifying a refund, and that the Company failed to demonstrate whether the interim rates included a negative recovery from customers.¹⁷ Second, Mr. Gorman clarified that the cost of service schedules in that case show that the Company's claimed pension expense was \$0 on a company and Minnesota

¹³ *Id.* at 60-61.

¹⁴ MP 2016 Rate Case Order at 17.

¹⁵ Recommendations at 56 n. 361.

¹⁶ Company Initial Br. at 60 n.225.

¹⁷ Ex. LPI-2 at 13:6-12 (Gorman Surrebuttal).

jurisdictional basis.¹⁸ Third, Mr. Gorman testified that the Company's information requests from that case contain materially different information than its schedules.¹⁹ Fourth, Mr. Gorman demonstrated that, regardless of the evidence submitted by the Company, rates in the 2008 case were immediately superseded by the Company filing its 2009 rate case the day after final rates went into effect.²⁰ In short, Mr. Gorman provided historical context to explain the irregularities in 2008 and 2009. On the other hand, the Recommendations do not address these points, underscoring the ALJ's failure to consider relevant evidence weighing against the Company.

In remanding this issue, the Court of Appeals did not hold that the Commission's finding was incorrect, only that it did not sufficiently explain why it discounted Minnesota Power's evidence and rejected the ALJ's detailed findings.²¹ Substantially more than sufficient record evidence exists to support exclusion of MP's PPA from rate base, and without demonstrable evidence that shareholders alone fund the PPA, MP should not be permitted to recover PPA in its rate base. Proceeding from the ALJ's failure to meaningfully address and account for evidence presented by LPI showing the funding source of the Company's PPA could not be attributed solely to investors, LPI believes the Commission should simply supplement its underlying decision that properly diverged from the ALJ's recommendations, relying on existing record evidence. The Commission does not need to reopen the record to supplement its decision.

B. The Department of Commerce Need Not Retain an Expert for These Matters on Remand.

Regarding the Department of Commerce's request to incur costs for specialized technical professional investigative services pursuant to Minn. Stat. § 216B.62, subd. 8, LPI does not believe

¹⁸ *Id.* at 13:13-15.

¹⁹ *Id.* at 14:1-5.

²⁰ *Id.* at 14:6-13.

²¹ *In re Application by Minn. Power for Auth. To Increase Rates for Elec. Serv. In MN*, 12. N.W.3d 477, 494 (Minn. App. 2024).

such action is necessary to address this issue on remand. Remand of this issue is not an opportunity for Minnesota Power to relitigate its positions and make arguments anew. The Commission has discretion as to whether the record should be reopened, and it should apply that discretion to decline to reopen the record, thus nulling the need for a technical consultant to rehash these issues.

III. CONCLUSION

For the reasons provided herein above, LPI respectfully requests the Commission supplement its decision, without reopening the record in this proceeding, to further explain its decision to exclude PPA from Minnesota Power's rate base, via the Notice and Comment process. LPI believes retention of the Commission's underlying determinations to exclude recovery of PPA will prevent improper recovery of Minnesota Power's costs, and ultimately result in just and reasonable electric rates.

Dated: April 22, 2025

Respectfully submitted,

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