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December 20, 2019

Daniel P. Wolf
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: In the Matter of Basin Electric Power Cooperative's Integrated Resource Plan
PUC Docket No. ET-6125/RP-19-425

Enclosed please find Dairyland Power Cooperative's Comments on Sierra Club, Fresh Energy, and the Minnesota Center for Environmental Advocacy's (SCFEMCEA) Motion to Compel Basin's Response to Information Requests (IRs).

Thank you.

Sincerely,
WHEELER, VAN SICKLE & ANDERSON, S.C.

/e/ Justin Chasco

Justin W. Chasco

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben	**CHAIR**
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Valerie Means	**COMMISSIONER**
Matthew Schuerger	**COMMISSIONER**
John Tuma	**COMMISSIONER**

In the Matter of Basin Electric Power Cooperative's Integrated Resource Plan	**PUC Docket No. ET-6125/RP-19-425**

DAIRYLAND POWER COOPERATIVE'S COMMENTS ON SIERRA CLUB, FRESH ENERGY, AND THE MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY'S (SCFEMCEA) MOTION TO COMPEL BASIN'S RESPONSE TO INFORMATION REQUESTS (IRs)

On November 21, 2019, the Commission issued a Notice of Comment Period (the "November 21 Notice") in this docket seeking comments on the Motion to Compel Basin Electric Power Cooperative's ("Basin") Response to Information Requests ("IRs") served by Sierra Club, Fresh Energy, and the Minnesota Center for Environmental Advocacy ("SCFEMCEA"). The IRs were sent to Basin seeking information in the docket opened by the Commission to receive Basin's Optional Integrated Resources Plan Report ("O-IRP Report") filed on June 27, 2019. The November 21 Notice listed eight topics open for comment.

Dairyland Power Cooperative ("Dairyland") files these comments in response to the November 21 Notice.

COMMENTS

Dairyland responds to the eight topics as follows:

1. Are IRs 1-SCFEMCEA-1 (a), (c), (d), (i), and (j); IR 1-SCFEMCEA-2(b); IR SCFEMCEA-4; and IR 1-SCFEMCEA-6 within the scope of Minn. Stat. § 216B.2422, subd. 2b? If any of the above is not within the scope, please provide a detailed reason why the specific inquiry is beyond the scope of Minn. Stat. § 216B.2422, subd. 2b.

No. The IRs are beyond the scope of Minn. Stat. § 216B.2422, subd. 2b. An O-IRP is not the equivalent of an IRP, as eligible cooperatives (Basin and Dairyland) "may, *in lieu of filing a resource plan* under subdivision 2, elect to file a report to the commission." (Emphasis added.) The statute allowing the filing of an O-IRP was enacted to prevent exactly what SCFEMCEA requests in this proceeding: use of the government's and the cooperatives' time and resources far in excess of the value to the public from such endeavors. A primary purpose of the statute was to reduce the regulatory burden on cooperatives whose resource planning decisions are made by democratically elected boards of directors and whose operations in Minnesota are small enough that the Legislature recognized they have little impact on statewide reliability. Basin, for example, has no coal- or gas-fired generation resources in Minnesota.

During the Senate hearing held when the bill was first introduced, witnesses invited by the sponsor of the bill described in detail how the burden of the IRP was disproportionate to such a degree that both affected cooperatives (Basin and Dairyland) spent more time dealing with Minnesota regulatory matters than was spent in all other states they operate in *combined*. This is despite the fact that Basin's and Dairyland's respective loads in Minnesota fall within margin of error calculations in a Minnesota statewide reliability analysis. A representative of Basin specifically noted the burden of discovery as a reason that they supported amending or removing the IRP requirements for certain cooperatives. Simply put, if the Commission were to require

Basin to respond to the IRs posited by SCFEMCEA, the enactment of Minn. Stat. § 216B.2422, subd. 2b authorizing certain cooperatives (Basin and Dairyland) will have been a futile act by the Legislature and the Governor. There was no other reason to enact Minn. Stat. § 216B.2422, subd. 2b except to dramatically reduce the regulatory burden on the cooperatives and allow the Department of Commerce (Division of Energy Regulation) and the Commission to focus their resources on matters of statewide import.

2. Subd. 2b states a "cooperative may, in lieu of filing a resource plan under [Minn. Stat. § 216B.2422] subdivision 2, elect to file a report to the commission." What is the significance of the term "report" to describe the filing to be made, relative to the term "Resource plan," defined in subdivision 1? Please describe how a "report" may differ from a "Resource plan" as well as how a "report" may be similar to a "Resource plan."

If the Commission allows discovery in O-IRP proceedings, the difference between a "report" and a "resource plan" will become far less significant than the Legislature intended when it used different words to describe the different processes. When similar laws use different words, it should be presumed that the difference is intentional and meaningful.

A report is an official or formal statement of facts or an account of something that has already taken place. Black's Law Dictionary 1169 (5th edition 1979). In this context, a report is a filing made solely to inform the Commission of the resource planning decisions that have already been made by democratically elected board of directors of cooperatives. A report does not require subsequent factual development and no factual findings need be made by the Commission. As a result, discovery is neither necessary nor appropriate. Allowing discovery frustrates the purpose of having a "report" instead of a "resource plan" subject to approval.

3. Subd. 2b states, "The report must include projected demand levels for the next 15 years and generation resources to meet any projected generation deficiencies." Does this sentence limit the discovery for O-IRP to only the content referenced in this sentence? If so, please explain how and why.

Discovery is not limited by this language because no discovery is appropriate for this proceeding. The use of discovery in an advisory proceeding to consider a "report" is inconsistent with both the plain language of the statute and the clear legislative intent to dramatically simplify the Commission's review of the resource planning process for certain cooperatives. No legitimate purpose would be served by allowing formal discovery. Cooperative boards have the responsibility and authority to make resource planning decisions. The O-IRP should not be a back door to undercut the authority granted to the democratically elected cooperative boards to make decisions in the best interests of their members. Formal discovery unnecessarily adds costs for the cooperative, its member owners, the Department of Commerce (Division of Energy Regulation), and the Commission. Discovery will also delay prompt Commission consideration of an O-IRP and have little, if any, value in light of the informational-only purpose and nature of an O-IRP report. The IRs will not assist the Commission in evaluating whether the O-IRP Report satisfies the standards of Minn. Stat. § 216B.2422, subd. 2b. or ensuring resource adequacy and reliability in Minnesota.

4. Subd. 2b states, "to supply the information required in a report under this subdivision, a cooperative may use reports submitted under section 216C.17, subd. 2, reports to regional reliability organizations, or similar reports submitted to other state utility commissions." Does this sentence impact the Commission's ability to compel additional information? Why or why not?

Yes, the plain language indicates that discovery is not appropriate for O-IRP filings. The referenced language is one of many examples of a clear legislative directive to limit the scope and burden of O-IRP reports. Prior to the enactment of Minn. Stat. § 216B.2422, subd. 2b, the Legislature had already determined that Commission orders regarding cooperative IRPs are advisory. The addition of the O-IRP was intended to further limit the burden of preparation and review of resource planning reports of multi-state cooperatives serving very limited loads in

Minnesota. The statute allows cooperatives, not SCFEMCEA, to determine the manner in which information is provided and how compliance is most efficiently achieved.

5. Subd. 2b also states "The commission may take whatever action in response to a report under this subdivision that it could take with respect to a report by a cooperative under subdivision 2." Does this sentence impact the Commission's ability to compel additional information? Why or Why not?

Yes, it does. The sentence authorizes (but does not require) the Commission to take whatever action on a cooperative's O-IRP as it could take with respect to an IRP. For "public utilities," under Minn. Stat. § 216B.2422 subd. 2 (a): "The commission shall approve, reject, or modify the plan of a public utility, as defined in section 216B.02, subdivision 4, consistent with the public interest." But for all other utilities, including cooperatives, Subd. 2 (b) "the commission's order shall be advisory and the order's findings and conclusions shall constitute prima facie evidence which may be rebutted by substantial evidence in all other proceedings." Thus, the only equivalent Commission action authorized by Subd. 2b for the Commission to take is to issue an advisory order.

In addition, the referenced language was not intended to nullify the entire purpose of the 2012 legislation. The referenced language should be interpreted in a manner that is consistent with the other language in the statute and in harmony with purpose of the statute, both of which indicate that the O-IRP should not be burdensome, with the order being advisory and informational only.

Requiring a cooperative filing an O-IRP to respond to IRs would be inconsistent with the Commission's authority and the purposes of the O-IRP statute.

6. Are there any practical or policy implications the Commission should be aware of for multi-jurisdictional cooperative utilities filing O-IRPs, or IRPs?

Yes. The IRs have the perverse effect of increasing the burdens on the Commission and those choosing to submit annual O-IRP reports. That absurd result is not what was intended by the enactment of Minn. Stat. § 216B.2422, Subd. 2b. The O-IRP Reports are intended to inform the Commission on how cooperatives are addressing their members' future needs. The O-IRP Reports are required to be filed annually, not every two years for filing an IRP. Requiring a cooperative to respond to IRs about its O-IRP will delay a Commission decision coming much later after an extensive discovery process. Ordering cooperatives who file O-IRP reports under the annual O-IRP process to respond to IRs will result in a never-ending regulatory process for both the cooperatives and the Commission. Oftentimes, the filing of another annual O-IRP report could make the O-IRP filed in the previous year moot: it would be superseded by the new annual O-IRP. This is exactly what the Legislature was seeking to avoid when it authorized certain cooperatives to submit an O-IRP report in lieu of an IRP.

The Commission should also take note of the practical implications of its decision here for multi-jurisdictional cooperatives. Dairyland and its distribution cooperatives are member-owned, not for profit utilities that are governed by elected boards of directors. The boards are democratically elected by their members from throughout their service areas and from each state in which the cooperative has members. Each member, and in turn each director, has one vote.

Generation and transmission ("G&T") cooperatives like Dairyland are also governed by a board of directors with each of Dairyland's members choosing one director. Dairyland's board directors represent members in each state in which Dairyland's members are located. The directors are responsible for the overall business of the cooperative, including resource selection. With the directors on Dairyland's board having one vote, Dairyland is generally operated and planned on a system-wide basis; it does not have operating divisions in each state. While the

Intervenors claim that only they can protect the interests of their members in this docket, that is not true. Their members are also distribution cooperative members who may participate in the elections for the directors of their cooperative and they may participate in the elections of their distribution cooperative's board of directors, which in turn selects one of its directors to Dairyland's board. They have the opportunity to be more involved in the resource planning decisions of their cooperative electric providers, both at retail and at wholesale, than most Minnesotans.

The Commission should also be mindful that its decisions about the resource selection decisions of multi-jurisdictional cooperatives can cause harm that far exceeds any potential public benefit. Dairyland's serves its member distribution cooperatives in four states: Wisconsin, Illinois, Iowa, and Minnesota. Dairyland's presence in Minnesota is minimal. Each state may have requirements that Dairyland must meet. The possibility of conflicting legal or regulatory requirements is always present and can, at best, cause significant inefficiencies. Inconsistent regulatory directives can negatively impact the ability of multi-jurisdictional entities to make long-term investments to ensure reliable and reasonably priced service.

As noted in Dairyland's 2019 O-IRP, only three of Dairyland's 24-member distribution cooperatives are located in Minnesota, and in 2018, Dairyland provided only 1.15% of the electricity annually sold at retail in Minnesota. Even if there were no conflicts with other states' requirements, Minnesota's ability to require information about Dairyland's activities in the other states may violate the Commerce Clause of the U.S. Constitution, especially in light of the little, if any, benefit to Minnesota.

7. In interpreting Minn. Stat. § 216B.2422, subd. 2b, what weight should be given to regulatory or legislative history? What conclusions should be drawn from the regulatory

or legislative history if it is given any weight, and are there any other factors that should be considered?

As noted above, the legislative history and the plain language of the statute is clear that the purpose of Minn. Stat. § 216B.2422, subd. 2b was to reduce the cost of compliance for both cooperatives, the Department of Commerce (Division of Energy Regulation), and the Commission by simply requiring the provision of a report that is informational only and that results only in an advisory order. The legislative history and plain language of the statute should be given great weight.

8. Are there other issues or concerns related to this matter?

The Commission should not allow discovery in O-IRP proceedings. No information sought by SCFEMCEA will assist the Commission in deciding whether an O-IRP report meets the requirements of Minn. Stat. § 216B.2422, subd. 2b. The purpose of that statute is to streamline the IRP process by allowing certain cooperatives, including Basin and Dairyland, the choice to file with the Commission either a full IRP, or an O-IRP report. Choosing to file an O-IRP report will reduce costs for the cooperatives, the Department of Commerce (Division of Energy Regulation), and the Commission.

Thank you for the opportunity to comment on these important issues.

CERTIFICATE OF SERVICE

I, Justin W. Chasco, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at Maple Grove, Minnesota.

Dairyland Power Cooperative

DOCKET NO.: ET-6125/RP-19425

Comments of the Dairyland Power Cooperative In the Matter of a Motion to Compel Basin Electric's Response to Information Requests (IRs).

Date:

12/20/2019

/s/*Justin Chasco*

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