MINNESOTA
PUBLIC UTILITIES COMMISSION

Staff Briefing Papers

Meeting Date	October 14, 2021		Agenda Item 2**
Company	Minnesota Power (or the Company)		
Docket No.	**E-015/PA-20-675**		
	In the Matter of the Petition by Minnesota Power for Approval of Land Sales		
Issues	Should the Commission approve Minnesota Power's request to sell certain residential lease lots for which Company ownership is no longer required to continue operating its hydropower reservoirs?		
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✓ **Relevant Documents**	**Date**
Minnesota Power – Petition	August 31, 2020
Department of Commerce – Comments	January 15, 2021
Minnesota Power – Reply Comments	January 25, 2021
Department of Commerce – Supplemental Response Comments	March 25, 2021
Minnesota Public Utilities Commission - Briefing Papers	May 5, 2021
Commissioner Tuma – May 13, 2021 Agenda Decision Options Amendment	May 12, 2021
Diane Palmstein – Comment Received outside Comment Period	June 10, 2021
Minnesota Power – Letter- Supplemental Letter	June 18, 2021
PUC – Notice of Supplemental Comment Period on Land Sale Issues	June 28, 2021
Department of Commerce – Supplemental Comments	July 19, 2021
Minnesota Power – Letter – FERC Letter	July 27, 2021

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✓ Relevant Documents	Date
Minnesota Power – Letter with Additional Points of Clarification	September 1, 2021
Minnesota Power – Supplemental Information to PUC Info Request	September 16, 2021
Minnesota Public Utilities Commission – Public Comment Batch 1	September 16-17, 2021
Minnesota Public Utilities Commission – Public Comment Batch 1	September 20, 2021
Minnesota Public Utilities Commission – Public Comment-Whiteface and Island Lake Committee Members	September 20, 2021
Minnesota Public Utilities Commission – Public Comment – J Budd	September 20, 2021
Minnesota Public Utilities Commission – Public Comment – Meyer	September 23, 2021
Minnesota Public Utilities Commission – Public Comment - Ekeroth	September 23, 2021
Minnesota Public Utilities Commission – Public Comment Batch 1	September 23, 2021
Minnesota Public Utilities Commission – Public Comment – Benson	September 23, 2021
Minnesota Public Utilities Commission – Public Comment Batch 1	September 24, 2021
Minnesota Public Utilities Commission – Public Comment - Hansen	September 24, 2021
Minnesota Public Utilities Commission – Public Comment Batch 1	September 27, 2021
Minnesota Public Utilities Commission – Public Comment Batch 1	October 1, 2021

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I. Statement of the Issues

- Should the Commission grant a variance to Minn. Rules, part 7825.1400 filing requirements?
- Should the Commission approve Minnesota Power's request to sell certain residential lease lots for which Company ownership is no longer required to continue operating its hydropower reservoirs?
- Should the Commission allow Minnesota Power to set the baseline value of each lot on the county's Estimated Market Value ("EMV") methodology, or establish a different baseline and/or time period?
- Should the Commission establish other requirements and/or conditions?
- Should the Commission authorize Minnesota Power to defer all proceeds from the land sales into a regulatory liability that would be refunded to customers in either a future rate case or through the Renewable Resources Rider?

II. Introduction

Minnesota Power in this filing is seeking approval to sell residential leased lots surrounding several reservoirs in its hydroelectric (HE) system, for which ownership is no longer required to maintain operations.[1] The proposed lots for sale have an estimated value of approximately $101 million.[2] The Company proposes to credit ratepayers the net proceeds from the sales in a future rate case or through the Renewable Resources Rider to mitigate against future rate increases.

The lands that Minnesota Power is proposing to sell were acquired about a hundred years ago, specifically most of the lots were purchased in 1923.[3] At the time of purchase, the land was remote, rural and undeveloped with an overall book value of about $1 million.[4]

This Docket came before the Commission at its May 13, 2021 Agenda Meeting, when it was tabled. The Commission requested that Minnesota Power conduct a survey of its leaseholders to gauge their interest in MP's proposed sale of the leased properties and present that information to the Commission. At the meeting the Commission discussed Commissioner Tuma's amended decision alternatives. These are discussed in in section VI, items D-G of these briefing papers. The FERC issued an Order Amending Project Boundary on July 26, 2021. The Commission has received a number of public comments from leaseholders.

III. Background

Minnesota Power, in its pursuit to mitigate rate increases for all customers especially in this period in which all classes of customers are struggling to recover from the economic effects of COVID-19, proposed to begin selling unneeded land holdings along its hydro reservoirs. Along

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[1] Minnesota Power's Petition, p. 2.

[2] Id., at p. 6.

[3] Id., at p. 9.

[4] Id.

with the request to sell some lands, the Company requested guidance on the lands' valuation and requested to be allowed to defer proceeds from the sale to a regulatory liability, that would be credited to customers in the future. Thus, the Company submitted this petition pursuant to Minn. Stat. §§ 216B.16, 216B.1696 and 216B.50.

Minnesota Power's hydropower reservoir system's surrounding leased lots include twenty-one (21) lots on Fall and Garden Lake in Lake County, as well as approximately one thousand (1,000) lots within the St. Louis River Project ("SLRP"). The majority of the residential leased lots in SLRP are on Island, Fish and Whiteface Reservoirs, and these lots are currently undergoing significant refinement, including surveying, platting and potential adjustment of the Federal Energy Regulatory Commission ("FERC") project boundary.[5]

The Company reviewed the SLRP's Project Boundary and determined that it includes land that is not needed to operate and maintain its HE system and does not serve any other project purpose. Therefore, prior to offering the lots for sale, Minnesota Power plans to submit a petition to FERC to revise the Project Boundary to include only the first 3 feet of land in from the shoreline, rather than the first 25 feet in from the shoreline. The Company will retain ownership of the portion of the land that is within the project boundary (i.e., classified as utility property), and sell only the land that is outside of the boundary (i.e., classified as non-utility property). The Company would provide a riparian easement to allow the new landowners to access and use the lake.

In its August 31, 2020 Petition Minnesota Power requested approval to sell land holdings surrounding many of its hydropower reservoirs worth approximately $101 million, including permission to set baseline value of each lot on the basis of the county's estimated market value (EMV) and defer sale proceeds into a regulatory liability[6] to be returned to customers in future rate case or via the Renewable Resources Rider.

Minnesota Power also requested a variance on filing requirements set forth by Minnesota Rules, part 7825.1400 that pertains to capital structure and the issuance of securities. Regarding this Rule, the Company believes a variance is appropriate since the requirements are relevant only to investigating the issuance of securities that result in changes in a Company's capital structure, which is not the case in this filing. The Company believes the public interest will not be adversely affected and that no other applicable law or statute will be violated by granting the variance.

On January 15, 2021, the Department filed Comments indicating general support for the Company's proposal, including support for the Commission to grant the requested variance Minnesota Rule, part 7825.1400, but requested additional information from Minnesota Power, before it would make its final recommendations.

[5] Minnesota Power's Petition, p. 5.

[6] The Commission approved, and the Department supported, the creation of a regulatory liability for the sale of Minnesota Power's service centers on February 8, 2018 in dockets E015/PA-17-457, E-105/PA-17-459, E-015/PA17-460. E-105/PA-17-461.

On January 25, 2021, Minnesota Power filed Reply Comments addressing the issues raised in the Department's Comments.

On March 25, 2021, the Department filed Response Comments recommending approval of the Petition, with reporting requirements.

On May 12, 2021, prior to the Commission' May 13 Agenda Meeting, Commissioner Tuma offered the following two decision alternatives:

> (1) Allow Minnesota Power to set the baseline value for each lot occupied by a leaseholder for sale on the county's EMV methodology plus 4 percent to capture the county assessment lag. Under this proposal, sales would need to be negotiated within the next two years of the date of the order, and if not, the property must be sold at auction upon the termination of the lease unless a variance is specifically sought for extraordinary circumstances.
>
> (2) Allow Minnesota Power to offer for sale lots without leaseholds at a price no less than 25 percent over EMV and may only be sold at less than this amount for offers above of 4 percent of the current EMV if the offer is over three months old. If these lots are not sold the company will file a proposal for auction or continued offering of the remaining lots two years after the date of the order.

On May 13, 2021, during its agenda meeting, the Commission heard Minnesota Power's Petition and tabled this matter to allow Minnesota Power to respond to Commissioner Tuma's proposed decision alternatives and to conduct an additional survey with current leaseholders to gauge their interest in these new alternatives.

On June 9, 2021, Diane Palmstein filed comments inquiring whether the EMV for the lot included land improvements to the property made by a leaseholder.

On June 18, 2021, Minnesota Power filed a letter reporting the results of a survey it conducted of its leaseholders and responding to the decision options amendment discussed at the May 13, 2021 agenda meeting.

On June 28, 2021, the Commission issued a Notice of Supplemental Comment.

The Department, on July 19, 2021, submitted Reply Supplementary Comments and recommended the Commission approve the Petition, with reporting requirements.

On July 27, 2021, Minnesota Power submitted a letter and attached the Federal Energy Regulatory Commission (FERC) Order Amending Project Boundary. The FERC Order amended the project boundaries for the Island Lake Reservoir, Fish Lake Reservoir, and Whiteface Reservoir near the St. Louis River Hydroelectric Project No. 2360.[7]

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[7] Order Issuing License (72 FERC ¶ 61,028) issued July 13, 1995.

Minnesota Power, on September 1, 2021, submitted a letter of clarification regarding time allowed for completing negotiation of sale of the lots and what baseline EMV is being used for calculation of purchase price. The Company noted that a two-year time limit to fully negotiate and complete sale of the may not realistic since 50% of the residential leases expire in 2046. Thus, if the Commission establishes a sales window, those who would want to purchase their lots in 2024 or later would not be able to do so. According to Minnesota Power “A sales window thereby reduces the choices a majority of leaseholders have for the land on which their personal property is located on. This would be contrary to the Company’s overall goal of using the lot sale proceeds to benefit customers in the coming years.” Additionally, the time when the lots would be available for purchase will depend on the county platting process, and state and county regulatory approvals.

On September 16, 2021, Minnesota Power filed Supplemental Information to Minnesota Public Utilities Commission’ Information Request

Between September 10, 2021 and October 1, 2021, a number of leaseholders (97 in total) submitted letters and comments to the PUC’ Consumer Affairs Office (CAO), which CAO subsequently filed into e-dockets. Many expressed concerns about whether monies they spent in improvements of their leased lots would be applied to reduce the sale price of the lots or apply this at 2.5% rate per year capped at 30 years of the lot ownership. However, 28 of the leaseholders expressed a willingness to buy now at Minnesota Power’ proposed sale price.

The comments included those received from Whiteface and Island lake Committee Members on September 10 that expressed dissatisfaction with some of the answers by representatives of MP’s Real Estate Department, at the meeting of August 21, 2021, at Colvin Townhall, Whiteface Reservoir. The meeting was held to explain MP’s land sale proposal and the reason for the sale. However, after the meeting, Whiteface and Island Lake Committee members appeared not be satisfied with explanations offered by MP’s representatives and sent a letter to CAO office with concerns about: leaseholders incurred costs in lots improvements (wells septic and septic system), money paid to secure leased lots, maintenance of access roads, use of surrounding lots (for mining and/or logging), consultation with 1854 Treaty Authority and consideration of the effects of COVID-19 financial constraints on leaseholders. The Committee concluded by requesting the Commission delay final decision until there is sufficient public input, additional meetings with the Company and the Commission and additional transparency provided by the Minnesota Power.

Commission staff sent information requests to Minnesota Power asking for additional information in response to the Whiteface and Island Lake Committee comments. MP’s response was filed into e-dockets on September 16, 2021.

IV. Relevant Statutes

Filing Requirement for Property Transfers

Minn. Stat. § 216B.50 states:

> A public utility shall not sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission, the commission shall investigate, with or without public hearing. The commission shall hold a public hearing, upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

In view of the above statutes, MP has to prove the reasonableness of proposed land sale and for the Commission to approve the transaction, it must find that the transaction is reasonable and consistent with public interest. The Department in its Comments stated that the proposed land sale and ratepayer credit fall under the Commission's purview and as such should approve the sale, if it finds the transaction is consistent with the public interest.

Filing Requirements, Minnesota Rules 7825.1800 and 7825.1400

Minnesota Rule 7825.1800 contains the filing requirements for property acquisition petitions. Specifically, the rule states:

> Petitions for approval to acquire property shall contain one original and three copies of the following information, either in the petition or as exhibits attached thereto:
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> A. Petitions for approval of a merger or of a consolidation shall be accompanied by the following: the petition signed by all parties; all information, for each public utility, as required in parts 7825.1400 and 7825.1500; the detailed reasons of the petitions and each party for entering into the proposed transaction, and all facts warranting the same; the full terms and conditions of the proposed merger or consolidation.
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> B. Petitions for approval of a transfer of property shall be accompanied by the following: all information as required in part 7825.1400, items A to J; the agreed upon purchase price and the terms for payment and other considerations.
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> C. A description of the property involved in the transaction including any franchises, permits, or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of

such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.

D. Other pertinent facts or additional information that the commission may require.

Minnesota Rule 7825.1400 contains the filing requirements for capital structure approvals: property acquisition petitions. Specifically, the rule states:

A. A descriptive title.
B. A table of contents
C. The exact name of the petitioner and address of its principal business office.
D. Name, address, and telephone number of the person authorized to receive notices and communications with respect to the petition.
E. A verified statement by a responsible officer of the petitioner attesting to the accuracy and completeness of the enclosed information.
F. The purpose for which the securities are to be issued
G. Copies of resolutions by the directors authorizing the petition for the issue or assumption of liability in respect to which the petition is made; and if approval of stockholders have been obtained, copies of the resolution of the stockholders shall be furnished.
H. A statement as to whether, at the time of filing of the petition, the petitioner knows of any person who is an "affiliated interest" within the meaning of Minnesota Statutes, section 216B.48, subdivision 1, who has received or is entitled to receive a fee for services in connection with the negotiations or consummation of the issuance of the securities, or for services in securing underwriters, sellers, or purchasers of the securities
I. A signed copy of the opinion of counsel in respect to the legality of the issue or assumption of liability.
J. A balance sheet dated no earlier than six months prior to the date of the petition together with an income statement and statement of changes in financial position covering the 12 months then ended. When the petitions include long-term securities, such statements shall show the effects of the issuance on such balance sheet and income statement.

The Commission has authority to grant rule variances under Minnesota Rule 7829.3200 when the following criteria are met:

- Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- Granting the variance would not adversely affect the public interest; and
- Granting the variance would not conflict with standards imposed by law.

V. Parties' Comments

A. Minnesota Power

Minnesota Power's Petition proposed to sell, over the next few years, the majority of its residential lease lots with EMV of over $101 million with a book value of under $1 million and credit the difference between the book value and the sales price to ratepayers. The Company, for sale purposes relied on the assessed EMV, as determined by county assessors for tax purposes, as a reasonable estimate of the value of the lots to offer for sale.

Minnesota Power proposed to offer each lot to its current leaseholders using the lot's current assessed EMV as the offer price. If a leaseholder initially chooses not to purchase the lot, the Company will fully honor the lease through its current term, and the leaseholder will have a second chance to purchase the lot when the lease expires. However, leaseholders that choose not to purchase their lots by the end of their current lease will be required to sell the structures on their lots, and the purchasers of the structures will then be required to also purchase the lot from Minnesota Power.[8] For the sale of unoccupied lots MP would use a standard, competitive bidding process and list the lots for sale using the EMV as the list price and will secure the best price possible for each lot.[9]

Minnesota Power requested approval of a variance to Minnesota Rules 7825.1800 and 7825.1400, which are only relevant for capital structures filings for the purpose of investigating the issuance of securities and not applicable for this Petition.

B. Department of Commerce

The Department, in its comments, stated that the proposed land sale and ratepayer credit fall under the Commission's purview and, as such, the Commission should approve the sale, if it is in public interest.

Thus, Department commented that Subpart A of Rule 7825.1800, specifically refers to mergers and consolidations and is not applicable to land sale. Subpart B refers to Rule 7825.1400, item A to J for which MP offered partial information. On subpart C, MP included information describing the property and estimating its original cost. MP offered no depreciation information, since land does not depreciate but instead appreciates. Finally, for subpart D, no information was necessary. Accordingly, the Department held that the Petition meets all the relevant reporting requirements except for the requirements of Minnesota Rule 7825.1400.

As for Minnesota Power's request for a variance to Rule 7825.1400, the Department recommended the Commission grant the variance request and noted thus:

> The Department agrees that requiring Minnesota Power to provide the information required for Minnesota Rule 7825.1400 would constitute an excessive burden on the Company, because this information relates to specific types of transactions (securities

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[8] Minnesota Power's Petition, p. 7.

[9] Id.

issuances) that are inapplicable to the transaction proposed in this docket. Further, the Department sees no reason why granting a variance to these filing requirements would adversely affect the public interest and is not aware of any laws that would be violated as a result of granting the variance. Therefore, the Department recommends that the Commission grant Minnesota Power a variance to Minnesota Rule 7825.1400.[10]

Further, the Department, in its January 15, 2021 comments, reviewed the reasonableness of the Minnesota Power's proposed land sale and concluded that the proposal is reasonable, so long as the sale price is appropriate and thus, requested additional information related to the sales price, journal entries to record sale of the lots, federal and state capital gains tax treatment for the land sales, and any direct or indirect benefits that inure to any non-regulated affiliates. These are discussed in detail in the following section of the briefing papers.

VI. Staff Analysis

A. Should the Commission approve Minnesota Power's request to sell certain residential lease lots for which Company ownership is no longer required to continue operating its hydropower reservoirs?

Minnesota Power stated that in preparation for the proposed land sale, it reviewed the FERC boundary of the St Louis River Project (SLRP) in order to make sure the lots can be sold without jeopardizing compliance with FERC'S requirements for land within the project boundary, or the Company's ability to operate and maintain downstream hydroelectric generation reservoirs and including other SLRP uses like recreation, cultural and environmental protection. By virtue of the said review Minnesota Power determined that, instead of the first twenty (25) feet in from shoreline, it could adjust the FERC Project Boundary back to include only three (3) feet of land from the shoreline while remaining compliant with FERC's requirements and be able to maintain and operate its reservoirs.[11]

The Company also noted that it would be able to include additional tracts of land to this transaction. The Company also opined that it knows of no significant potential costs or investments related to the lands that it hopes to add to regulated rate base. Only minimal (less than $10,000 annually) monitoring and maintenance expenses are foreseen.

Further, Minnesota Power indicated that, if there were a flood or the occurrence of some other event that affected the lots, the Company would not be subject to additional liability because of the sale of these lots. The Company is not aware of any other potential legal, or operational harm of financial concern regarding the proposed land sales.[12]

The Department held that the sale of land is reasonable since the land MP is proposing to sell is not required for operational purposes and the sale will not expose the Company and its ratepayers to any additional financial or operational risks.

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[10] The Department's Comments, p. 6.

[11] Minnesota Power's Petition, p. 6.

[12] The Department's Comments, p. 6.

Staff supports the Department's recommendation since there seems to be no discernable potential legal or operational risk that may result in material financial harm from the proposed land sales.

1. FERC Project Boundary Change

Minnesota Power, on December 22, 2020, in docket 2360-000 submitted a non-capacity license amendment application to the FERC to adjust the Project Boundary for specific sections of Island, Fish, and Whiteface Reservoirs in the SLRP. If FERC approves its request, this will increase the Project Boundary by 423 acres or by about 10% and, if MP adds this new land to rate base, it would be at book value for about $500,000 ($0.5 million).[13]

The Department, in its comments, opined that, should FERC deny MP's application to change Project Boundary, MP would be unable to sell the lots as planned. However, Minnesota Power stated that, should FERC deny its request, then it would have to conduct a re-evaluation of the value of leased lots, since the EMV would be inapplicable to the new lots.

Minnesota Power, in its January 25, 2021 reply comments, disclosed that its request to be designated as a non-federal representative to FERC to fulfill National Historic Preservation Act (NHPA) Section 106 compliance responsibility on their behalf was granted by FERC on January 21, 2021 under Docket P-2360-272.[14]

The Department, in its comments, recommended that, in the event of FERC approval, MP should be required to, within 10 days after FERC issues its Order, make a compliance filing in this docket describing the FERC's decision as well as any impacts the decision may have on the proposed sales.[15]

On July 27, 2021 Minnesota Power filed a letter with the Commission disclosing that it has received approval from the FERC an Order Amending Project Boundary in FERC Project No. 2360-272[16] and attached a copy of that Order. MP noted that the FERC Order will facilitate the sale of the leased lots around the hydro reservoirs. MP also noted that FERC, in approving the application, conducted agency and tribal consultation and noted:

> No tribes expressed any concerns with the proposal. Additionally, in a June 21, 2021 email, the Fond du Lac Reservation requested additional information on the proposal from the licensee, which the licensee subsequently provided, and the Fond du Lac informed the licensee on July 22, 2021 that it did not have any concerns with the licensee's project boundary amendment proposal.

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[13] Id., at p. 2 and Attachment 6, p. 2 of 2.

[14] Minnesota Power's Reply Comments, p. 2.

15 The Department's Comments, p. 10.

[16] Minnesota Power's Letter – see FERC Order Amending Project Boundary (176 FERC ¶ 62,050), p.8., issued July 26, 2021.

B. Should the Commission allow Minnesota Power to set the baseline value of each lot on the county's Estimated Market Value ("EMV") methodology?

1. Sale Price based EMV

Minnesota Power proposed to maximize lease lot sale values by setting the baseline value of each lot on their respective county's assessed Estimated Market Value (EMV), which is a well-established Minnesota state processes.[17] The Company indicated that it conducted a survey in which over ninety (90) percent leaseholders expressed average to above average interest in acquiring their lease lot. This invariably meant that most of the lots will be sold to existing leaseholders, instead of through competitive, open-market listings.

The Department, in its comments, expressed some concerns on the Company's proposed reliance on county assessed EMV as opposed competitive sales processes. However, the Department noted that Minnesota Power defended the use of EMVs as a reasonable offer price for the lots since, by statute, Minnesota Department of Revenue's (DOR) Board of Appeals and Equalization Handbook, sales ratio for EMVs are targeted to be between 90-105 percent of actual sale prices.[18] Further, the Company held that EMVs are subjected to vetting and appeals processes, which afford them a level of credibility and acceptance not attainable via traditional one-off real estate appraisals. The Department also noted that the Company performed no analysis as to verify the accuracy of EMVs in counties where the lease lots located, but merely presumed the DOR's verification process of actual sales compared to EMVs to be accurate.

Further, the Department expressed concern with Minnesota Power's reliance on EMVs relating to attribution of total EMV of a lot to its land against the structures and improvements on the land and requested an explanation. In response to Information Request No. 2, Minnesota Power provided recent assessment reports, showing total EMV for each property and separate EMVs for the leased land, and the structures and buildings or improvements on the leased land, thus the total EMV equals the sum of the EMVs for the land and buildings.

The Department, in its comments, noted that the MN DOR uses sales ratios that merely compare total EMVs to actual sale prices and without providing adequate information regarding the accuracy of the separate land and building EMVs. This meant Minnesota Power did not evaluate the accuracy of the land EMVs it proposed to rely on and asked the Company in Information Request (IR) No. 24 to explain the process involved when a structure on a lot owned by Minnesota Power is sold.

Minnesota Power responded and provided data relating to 40 recent sales of structures on its lots during the past two years, including the EMV of the land, the value of the structures and improvements, and the purchase price. In each transaction, Minnesota Power retained ownership of the land, and the transaction involved only the structures on the lots. The Department compared the reported EMVs of the structures involved in each transaction to the purchase prices as depicted by the Department in Figure 1 below.

17 Minnesota Power's Petition, p. 6.

[18] Id., at p. 7.

Figure 1: Summary of Structures EMV/Purchase Price Ratios
Recent Lot Transactions[19]

Minimum Ratio	3.7%
Average Ratio	44.1%
Maximum Ratio	68.9%

Cumulative Transactions

Range	No. of Transactions	No. of Cumulative Transactions	Percentage
0 %– 10%	1	1	2.5%
10% – 20%	2	3	7.5%
20% – 30%	3	6	15.0%
30% - 40%	8	14	35.0%
40 %- 50%	9	23	57.5%
50% - 60%	12	35	87.5%
60% - 70%	5	40	100.0%

The Department noted that, in the above figure, the average ratio of structure EMV to purchase price in the forty (40) transactions was 44.1% and the highest ratio in any individual transaction was merely 68.9%, while 23 of the 40 transactions had ratios below 50%.[20] As a result of the low ratios for structures (buildings) in Figure 1, the Department became concerned that the land EMVs MP has proposed to rely on for setting the purchase price of most of the lots are not correct and probably underestimate the value of the lots.

In this vein, the Department argued that selling the lots based on land EMVs that under-estimate their value will result in an unreasonable transfer of wealth from Minnesota Power and invariably its ratepayers to buyers of these lots. Thus, the Department asked the Company the following questions:

1. whether it considered using competitive [bidding] processes for more (or all) of its lots?
2. whether it considered using any other methods of determining the offer price for each lot other than assessed EMV?

On the first question above, the Department noted:

> Minnesota Power stated that listing the lots for competitive sale on the real estate market was considered but dismissed as unviable. The Company stated that competitively bidding out land on which personal property exists would be highly detrimental to current leaseholders and would likely increase the risks of damage

[19] The Department's Comments, p. 9.
[20] Id.

> claims and other issues that would slow, complicate, and/or increase the expenses of the proposed divestiture. Additionally, the Company would not be able to list the lots for sale until the current leases expire, which would further delay the sale process.

Regarding the second question above, the Department noted:

> The Company also considered having each lot appraised and using the appraised value as the price offered to current leaseholders. The Company stated however, that because the current land EMV is used to determine annual rent, using an alternative valuation at the time of sale may create confusion and dissuade some leaseholders from participating, in which case the lots could not be listed for sale until the current lease expires. Additionally, the Company was concerned that it would be obligated to perform multiple appraisals in many cases, and the resulting fees and time needed for the extra process would negatively impact the timing and net proceeds received.

The Department considered Minnesota Power's responses and, in reply comments, stated that, despite its apprehensions regarding MP's reliance on EMVs as estimates of sale prices, in view of the difficulties associated with other alternatives or methods, Minnesota Power's proposal seemed reasonable.[21]

Staff agrees with the Department that MP's proposed use of county assessed EMV is reasonable. Besides, the process used to calculate EMV is purported to rely on well-established MN state processes.

2. Counter Offers from Leaseholders

As was discussed in section V of the Briefing Papers, Minnesota Power proposed to offer each lot to its current leaseholder using the lot's current assessed EMV as the offer price. If a leaseholder initially chooses not to purchase the lot, the Company will fully honor the lease through its current term, and the leaseholder will have a second chance to purchase the lot when the lease expires.

In view of the above discussion, the Department, in reply comments, asked Minnesota Power to explain whether Minnesota Power will consider counteroffers from current leaseholders after the Company offers to sell their lots at current EMV, or whether those offers will be non-negotiable.

Minnesota Power stated that it will not consider counteroffers from current leaseholders after the Company offered to sell their lots at current EMV.[22] Additionally, MP stated leaseholders will be availed the option to delay the purchase of the lot, to the extent that their lease term

[21] The Department's Supplementary Comments, p. 10.

[22] Minnesota Power's Reply Comments, p. 2.

allows; however, the methodology for calculating the purchase price will remain the same. Delayed purchases will be based on the most current EMV available from the county.[23]

Accordingly, the Department, in its March 25, 2021 supplemental reply comments, accepted Minnesota Power's response and concluded that the Company's proposed plan to offer the lots to existing leaseholders at current EMV seemed reasonable.

C. Should the Commission authorize Minnesota Power to defer all proceeds from the land sales into a regulatory liability that would be refunded to customers in either a future rate case or through the Renewable Resources Rider?

1. Proposed lot sales Accounting - Costs deductions from Sales Proceeds

Minnesota Power proposed to defer all proceeds derived from the sale of the lots into a regulatory liability which, at future dates, would be credited back to ratepayers. The Company initially indicated that ratepayers would be credited with the difference between sale price of the lots and their book value, but later amended this statement. Thus, the Company instead meant that the net sales amount would be returned to customers after deducting certain related costs/expenses from the gross sales proceeds. In fact, the Company provided a list that included the following costs for deduction from the gross amount of lot sales:

- prorated county taxes
- title charges and escrow/settlement charges (disbursement fee/courier fee, title exam - title company, document preparation – title company, closing fee – title company)
- government recording and transfer charges
- deed registration tax
- project management

The above list from MP emanated from the Department's Information request (IR) No. 28, asking that MP provide detailed list of expenses, including taxes that would be deducted from the land sale proceeds to arrive at final credit to ratepayers. Minnesota Power described the list as not exhaustive since total costs cannot be predicted precisely until after final sales.

The Department, in its comments, expressed concern about the cost item listed as "project management" and requested for explanation from Minnesota Power. Thus, the Department noted the following:

> In its IR response, Minnesota Power estimated that project costs would be equal to 7.5 percent of the sale price of the lots, but provided no information related to the nature of the costs included in that 7.5 percent beyond stating that they will be "variable" and "commensurate with hours required to oversee tasks and

[23] Id.

> transactions." In a subsequent IR response, the Company stated that the cost of the surveying and platting process it is currently undertaking, expected to be approximately $2 million, is included in this item. However, given that potential sale proceeds could be $101 million, project management costs of 7.5 percent would equate to $7.5 million, meaning Minnesota Power appears to be expecting to incur roughly $5 million in additional expenses**.**

Further, the Department asked Minnesota Power why it did not include income taxes to be charged against gains expected to be realized from the sales. Accordingly, the MP offered its response and which the Department noted as thus:

> In its response to Department IR No. 41, Minnesota Power clarified that there will be an income tax impact from the gain on sale, and that the Company is proposing to deduct this tax expense from the gross sale proceeds. The Company stated that the income tax gain on the land sales will be equal to the book gain (i.e., sale price less original cost of the land), and the Company will incur federal and state tax expense on that gain. In the example calculations provided in its IR response, the Company used its composite stated and federal income tax rate of 28.742 percent to illustrate the tax expense expected to be triggered by the gain.

Further, the Department, in its comments, stated that there exists a high level of uncertainty surrounding the types and amounts of costs expected to be deducted from the gross proceeds from the land sales, and as such it recommended the Commission require Minnesota Power to file detailed cost and revenue information on a regular basis until all of the lots are sold.[24]

On that point, Minnesota Power, in its Petition, indicated that it would provide annual updates on the number of sales, the purchase prices, and the amount (balance) in the tracker account. The Department agreed with the need for annual compliance filings as reasonable but recommended the Commission require Minnesota Power track and report on all additions to (i.e., sales revenue) and deductions from (i.e., expenses) from the tracker account at the most granular level possible.

2. Proposed Land Sales Accounting - Journal Entries

Minnesota Power provided journal entries in response to the Department's IR that asked for example of its proposed journal entries for recording lot sales. The Department, however noted that, contrary to its Petition, the journal entries provided by MP did not involve or create a regulatory liability to be returned to ratepayers in a future rate case or the Renewable Resources Rider. According to the Department, the information provided by MP instead showed that the journal entries record the gain on sale as income on Minnesota Power's income statement in FERC Account 421.1 Gain on Disposition of Property.[25]

[24] The Department's Comments, p. 12

[25] The Department's Comments, p. 13., and Attachment 21, p. 2 of 2.

The Department viewed many aspects of Minnesota Power's proposal and related explanations as reasonable, but before making its final recommendations requested that the Company provide additional information on the following:

> Department requests that the Company provide additional information regarding its proposed journal entries to record the sale of these lots. As described above, the Company stated that it would defer all proceeds from the lot sales into a regulatory liability, but the proposed journal entries do not create or involve a regulatory liability.

Minnesota Power, in reply comments, stated "Minnesota Power intends to defer all proceeds from the land sales, net of tax into a regulatory liability. Once all proceeds are distributed to customers the regulatory liability would terminate. The Company will pay tax on the gain at the time of the sale".[26]

Also, the Company stated that the benefits of the full gain would inure to the customer because the net liability amount will be grossed up for taxes since the customer distributions will reduce the Company's tax liability. For context the Company presented the below Illustrative example:[27]

Gain on land Sales	$100	
Corporate Tax	(28)	
Regulatory Liability	$ 72	
Distribution Gross-up	/ (1.40)	
Customer Revenue Impact		$(100)
Corporate Tax		28
Regulatory Liability		$ (72)

The Department, in its supplemental comments, held that Minnesota Power, in its reply comments, did not provide updated journal entries that demonstrated the creation of a regulatory liability. However, the Department noted that the Company subsequently provided updated journal entries showing the creation of the regulatory liability as proposed in the Petition.[28]

Thus, the Department reviewed the updated proposed accounting treatment of land sales and found it reasonable.

[26] Minnesota Power's Reply Comments, p. 2.
[27] Id., at p. 3.
[28] The Department's Supplementary Comments, p. 2.

3. Application of taxes to these land sales

The Department asked Minnesota Power to clarify whether the federal and state corporate income tax rates, or lower capital gains tax rates, will apply to these land sales.[29]

In reply comments, the Minnesota Power stated that federal and state corporate income tax rates will apply to land sales, and that business capital gains are taxed at the same rate as ordinary income.[30]

The Department in its supplementary comments concluded that, based on the Company's response, the proposal to use Federal and State corporate income tax rates to calculate the tax expense to be deducted (among other expenses) from the gross proceeds of the sales in determining the final credit for ratepayers should be considered reasonable.

4. Proposed Land Sales - Benefits Allocation

The Department, in its comments, expressed concern that Minnesota Power did not speak to what specific mechanism it would use to distribute net proceeds from the land sales to ratepayers nor the manner in which it would allocate the net proceeds across customer classes. Nevertheless, both parties agreed to address this issue in the future.

Although the Department agreed to leave the benefit allocation issue to a future filing, it observed the following:

> Minnesota Power stated that it submitted the Petition pursuant to Minn. Stats. § 216B.16, 216B.1696, and 216B.50. Minn. Stat. § 216B.1696 permits utilities to establish separate rates for energy-intensive, trade exposed (EITE) customers, as defined in the Statute.

The Department requested in its IR No.21 for clarification from Minnesota Power. In response, the Company stated that its reference to Minn. Stat. § 216B.1696 was inadvertent, and that it is not proposing to distribute the net proceeds only to EITE customers.[31]

5. Will the sale of these lands benefit the Company's nonregulated affiliates?

The Department requested that Minnesota Power explain in reply comments whether any of the tax liability generated by the sale of these lands will be used in any way to benefit the Company's nonregulated affiliates, for example by being used to consume nonregulated deferred tax assets or otherwise monetize tax benefits generated by ALLETE Inc.'s nonregulated lines of business.

Minnesota Power, in its reply comments, stated that there exists no direct or indirect benefits to any non-regulated affiliate from the land sales.[32]

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[29] The Department's Comments, p. 15.
[30] Minnesota Power's Reply Comments, p. 3.
[31] The Department's Comments, p. 14, and Attachment 22, p. 1 of 1.
[32] Minnesota Power's Reply, p. 3.

Below is a discussion of the issues (D, E, F and G) that emanated from the Commission's May 13, 2021 Agenda Meeting, where the Commission requested Minnesota Power to conduct a survey to gauge leaseholders' interest in the land sale and provide that information to the Commission. In the same meeting the Commission discussed the amended decision alternatives filed by Commissioner Tuma the prior day (May 12, 2021).

Minnesota Power, on July 18, 2021, filed an update in response to Commissioner Tuma's amended decision alternatives and the additional survey of the leaseholders. Accordingly, MP designed the land sale survey to provide the leaseholders the opportunity to select their preference among three choices, namely:

1) The most current Estimated Market Value (EMV), which may fluctuate from year to year. Platting would need to be complete before your EMV is assigned as your purchase price; platting is anticipated to be complete in phases, ranging from 2021-2023 (Minnesota Power's initially proposed option)

2) The 2021 Estimated Market Value, plus 4 percent to account for anticipated EMV increases for all phases. You would have six months after your plat is complete to enter into a purchase agreement to take advantage of this offer. (based on Commissioner Tuma's proposed amendment, but modified to remove the proposed auction process)

3) I am not interested in purchasing my lot at this time

Minnesota Power stated that it received back 313 responses to the survey and that each respondent was allowed only one response amongst the three choices. A total of 197 leaseholders or sixty three percent (63%) selected having MP set the purchase price at the 2021 EMV, plus 4 percent to account for the lag[33]. Also, a total of 76 leaseholders or twenty four percent (24%) preferred MP setting purchase price using the most current EMV, while a total of 40 leaseholders or thirteen percent (13%) expressed no interest in purchasing their lot at this time.[34]

D. Should the Commission allow Minnesota Power to set the baseline value of each lot for sale on the county's Estimated Market Value ("EMV") methodology plus 4%, with leaseholders having six (6) months to take advantage of this rate from the date the lot is offered for sale?

MP Power indicated that it would offer the leased lots for sale in phases between 2021 and 2023 after each leased lot is platted and ready for sale. MP plans to first offer the land for sale to current leaseholders who would have the opportunity to buy the lot at the 2021 EMV plus 4% and must take advantage of this offer within six (6) months. Also, the leaseholder retains

[33] Minnesota Power's Letter of Result of the Survey for Land Sale, p. 3.

[34] Id.

the right to buy the lot any time during the lease term at a price equal to the most current EMV even if leaseholder did not buy the lot within the period of MP's initial offer.

The Department, in its reply to supplemental comments, noted that EMVs are expected to trend upward over the next few years as was discussed during the prior Commission meeting of May 13, 2021. Thus, it would be unfair to a leaseholder whose lot was not ready to be offered for sale until 2023 who then would be saddled with paying higher purchase price, unlike the leaseholder that purchased in 2021. The Department opines that MP's updated proposal removes the potential unfairness, and therefore concurs with the updated proposal to set initial sale price at 2021 EMV plus 4% or, after the initial six months, to set sale price at the most recent EMV.

Staff agrees that MP's updated proposal to set sale price of the lots on the county's EMV methodology plus 4% with leaseholders taking advantage of the offer within six months of this rate from the date of offer seems advantageous to the leaseholder, otherwise after six months of the initial offer the sale price of the lot reverts to the most current EMV. This updated proposal brings the value of the land as near as possible to its fair market value or even a fair markup to account for time lag and or time value of money and fairness to leaseholders.

E. Should the Commission allow Minnesota Power to set the baseline value for each lot for sale on the county's EMV methodology plus 4% with sale being fully negotiated within the next two (2) years of the date of Commission' order?

Minnesota Power plans to offer all of its lots for sale by 2023 and indicated that, if a leaseholder fails to buy his or her lot within the two years as specified in Commissioner Tuma's amended decision option, then MP would continue to honor the lease agreement until the end of its term. Though part of Commissioner Tuma's decision option requires that, if a leaseholder refused to buy and the lease term ends, the land be sold at auction, both MP and Department objected to this aspect of the proposal.

The Department noted that MP indicated that some of the leases expire in 2028 and 2036 or later and, since the net sale proceeds would serve as a source of funds for rate mitigation, then the ratepayer benefits will be delayed if leaseholders decide to wait until 2028 or beyond to buy their lots. Thus, the Department noted it is likely the reason for the two-year window could be to pull sales closer in time to the current and avoid undue delay of benefits to ratepayers. Nevertheless, the Department also pointed there may not be enough time for MP to complete the sale of the lots even though MP thinks it can do so by 2023, since offering all land for sale is different from having all the land sold by 2023.

The Department recommended that the Commission direct MP to complete all sales within three years of the order in this docket instead of two years, which would give MP sufficient time to complete the land sales. Otherwise, the order could specify December 31, 2024[35] as last date to complete the sales.

[35] The Department's reply Supplemental Comments, p. 3.

F. If sale is not completed within two (2) years of the Commission's order, should Minnesota Power sell the property at auction upon termination of the lease unless Minnesota Power requests a variance specifically due to extraordinary circumstance?

Minnesota Power proposed that a leaseholder who did not buy the leased lot when the lot was offered for sale should be allowed to sell his or her personal property (home or cabin) on the leased lot with a stipulated condition of the sale that will require the buyer to also buy the lot from the Company at a sale price equal to the most recent EMV. This position differs markedly from the May 12, 2021, amended decision option requiring MP to auction off unpurchased lots.

MP, in its June 18, 2021 letter, stated that it would be highly controversial, and harmful to leaseholders' interest, if lots with personal property were sold at an auction since the current leaseholder would have to (1) outbid other potential buyers to purchase and retain the lot, (2) sell his personal property to the lot's buyer, or (3) pay to have his personal property removed from the lot. Thus, MP held that it would not, under any circumstance, support the option of sales by auction of leaseholders' lots. [36]

Thus, the Department agreed with Minnesota Power and stated:

> The Department agrees with Minnesota Power that if lots with personal property are auctioned and sold to new buyers, the leaseholders may experience significant financial harm. In such a case, the leaseholder's only two options would be to either sell his personal property to the new buyer or pay to have the property removed from the lot. As a result, the new buyer would have a significant advantage in negotiating the terms of the sale of the personal property, and the leaseholder may be forced to accept a harmfully low price for his personal property in order to avoid incurring the costs of removing the property and restoring the lot to its original condition, as required by the lease contracts.[37]

Further, in its reply to supplemental comments, the Department agreed that allowing current leaseholders to sell their personal property in this manner provides them with a reasonable opportunity to sell their property at a fair price while also ensuring reasonable prices for lots (i.e., the most current EMV). Also, the Department stated though it supports MP' proposal that leaseholders should be given ample opportunity to sell their lots in order to avoid the negative impact on them if their lots were sold by auction, but it recommended some time limit be imposed for sale of the lots on these leaseholders that decided not buy their lots. According to the Department the imposition of time limit would dissuade undue delay or intentional delay tactics in the sales of personal property by the leaseholders.

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[36] Minnesota Power's Letter, p. 3.

[37] The Department's reply Supplemental Comments. P. 4. See also: The Department understands after a lease expires, Minnesota Power has the right to require leaseholders to remove all personal property from their lots and restore the lots to their original condition. See Department Attachment 1.

The Department recommended that leaseholders be given one (1) year following the end of their current lease term to complete the sale of their personal property, if such leaseholders opted not to purchase their lots within the initial two to three (2-3) year window that was offered by MP.

Staff supports the Department's recommendation and MP's position as well. Staff notes that both the Department and MP oppose the sale at auction of leaseholders' lots who refuse or fail to take advantage of MP's sales offers within the specified period by auction. MP indicated that it would not compromise on this under any circumstance, while the Department is somewhat amenable to sale by auction but only if a leaseholder refused to buy the lot and failed to complete the sale of personal property on the leased lot within the required time frame. Since both the Department and Minnesota Power did not support sales of leased property at auction, it seemed reasonable not speak to the part of the option requiring MP to seek a variance due to extraordinary circumstance, if it did sell the lots at the end of their lease terms.

Usually the term "extraordinary circumstance" implies the occurrence of an event that is unusual in nature, infrequent in occurrence and the cost of the event is material in amount per generally accepted principles. Here, it is likely the event is not unusual in nature for a business entity though this is a utility company, however arguable that a utility as a business entity more than likely would dispose of unneeded or unproductive assets. In the occurrence of this type of event, which more than likely is infrequent, a business is not expected to often dispose of its assets and the event in this case can be viewed as material since the assets contemplated to be disposed or sold are valued at fair market value (FMV) of over $101 million. Thus, only two elements of the extraordinary circumstance requirements can be met, so it's not likely MP would go this route to request a variance. It is also unclear what the Commission would determine as an extraordinary event requiring a variance from an order to sell lots with expired lease terms.

G. Should the Commission allow Minnesota Power to offer for sale those lots without leaseholds at a price no less than 25 percent over EMV and may only be sold at less than this amount for offers above of 4 percent of the current EMV if the offer is over three months old and If these lots are not sold the Company will file a proposal for auction or continued offering of the remaining lots two years after the date of the order?

Minnesota Power stated that it has 20 lots without leasehold interest. The Company indicated that, in order to obtain the most value, invariably the best outcome for its ratepayers would be to engage outside established real estate agents to list and sell the lots with the condition that the listing agent obtain prior approval for any lot sale. MP indicated that it would deduct such costs as real estate firm charges, and other transaction charges from the sales revenue and return the net amount to its ratepayers.

The Department noted that, according to the amended decision alternative filed on May 12, 2021, MP would be required to initially list the unleased lots at a price no less than 125 percent of EMV, and only accept a price less than this amount, but above 104 percent of current EMV, if the offer is over three months old. Also, the amended decision alternative would require MP file a proposal for sales at auction or continued offering of lots that remain unsold two years after the order in this proceeding. The Department upon review of the two approaches opined that they seem reasonable and offered no objection on any of the approaches.

H. Department - Overall Recommendation

The Department, after detailed review and analysis of Minnesota Power's Petition and related information, made the following recommendations:

1. Approve Minnesota Power's Petition with the following modifications:
   a. for each lot occupied by a leaseholder:
      i. allow Minnesota Power to offer the lot for sale at a price of 2021 Estimated Market Value plus four percent for a period of 6 months beginning when the lot is offered for sale, and the most current EMV thereafter;
      ii. require that the sale of occupied lots be negotiated within three years of the date of the order in this docket;
      iii. or an occupied lot that is not sold to its current leaseholder within the permitted time frame, allow the leaseholder to arrange the sale of his or her personal property at any time during the remainder of the current lease, with the sale of the personal property conditioned on the buyer also purchasing the lot from Minnesota Power at a price equal to the then-current Estimated Market Value;
      iv. if a leaseholder does not purchase his or her lot, and also does not arrange the sale of his or her personal property by the end of his or her current lease, the lot must be sold at auction;
      v. permit Minnesota Power to seek variances to these requirements for specific, extraordinary circumstances

2. Require Minnesota Power to provide annual compliance filings that include:
   a. data regarding lot sale transactions, including:
      i. the number of offers to current leaseholders made to date as of the time of the compliance filing
      ii. the number of offers to current leaseholders accepted
      iii. the number of offers to current leaseholders rejected
      iv. the number of lots listed on the open real estate market
      v. the number of lots sold via the open real estate market
   b. the tracker balance, including:
      i. all additions to the tracker
      ii. all deductions from the tracker
   c. an estimate of anticipated customer benefits
   d. updates on the status of Minnesota Power's non-capacity license amendment application at the Federal Energy Regulatory Commission.

3. Require Minnesota Power to provide timely updates to the Commission via compliance filings in this Docket regarding important developments related to its non-capacity license amendment application at the Federal Energy Regulatory Commission.

4. Require Minnesota Power to track, at the most granular level possible, information on the costs and revenues associated with the lot sales, including:
   a. for individual lot sales:
      i. sale price
      ii. list price (if different from sale price)
      iii. EMV of land at the time of the sale
      iv. EMV of buildings/structures at time of sale
      v. all fees and expenses (e.g., title fees), itemized by type
      vi. whether the lot was sold to the current leaseholder
   b. for costs deducted from the tracker that are not attributable to individual lots sales, sufficient detail to determine whether they are internal costs included in base rates, or external costs.

Other Staff Analysis

Whiteface and Island Lake Committee Members and several individual leaseholders submitted comments outside of the Comment Period through the CAO, from September 16 to October 1, 2021 (as indicated in Section III and listed Relevant Documents section of the Briefing Papers). Minnesota Power held a meeting on August 21, 2021 with the leaseholders, where MP' representative explained and answered questions about the proposed lease lot sale, the purpose for the sale, a tentative timeline for surveying and platting, purchase options for leaseholders, as well informed that the Company would have to obtain permission from FERC and the Commission before the any sale can occur. However, after the meeting, Whiteface and Island Lake Committee members appeared not be satisfied with explanations offered by MP' representatives and sent a letter to CAO office with concerns about: leaseholders incurred costs in lots improvements (wells septic and septic system), money paid to secure leased lots, maintenance of access roads, use of surrounding lots (for mining and/or logging), consultation with 1854 Treaty Authority) and consideration of the effects of COVID-19 financial constraints on leaseholders.

As a consequence of the leaseholders' comments, Staff issued two (2) Information Request questions to which Minnesota Power responded as shown below:

Information Request No. 1:

- Identify who would be responsible for maintaining access roads to the lots sold to leaseholders?

Minnesota Power answered that an important aspect of the platting process that is currently underway is ensuring property owners have legal access to their property once private ownership occurs. As such, Minnesota Power plans to form a Common Interest Communities (CICs) on behalf of leaseholders that would function just like the current road association. Also, the CIC would be a legal entity and help ensure marketable title.

- Describe whether septic systems and wells are included in leasehold improvements and if the cost of these were paid for by current leaseholders, would such costs be deducted from the sales price of the lots at the time of purchase by the leaseholders?

Minnesota Power answered No. Because its current proposal uses EMV to set the base value of the land and EMVs are calculated by comparing sales data from raw land without including septic systems, wells, power supply, and other improvements.

- Specify the total amount of upfront money that were paid by leaseholders to reserve the right to lease their lots and how would this amount be treated once leaseholders opt-in and purchase their leased lots instead?

Minnesota Power responded that leaseholders who paid MP directly ("right-to-lease" payment) will receive a pro-rated benefit based on the amount of time remaining on their original lease term. However, a buyer/seller decision that did not involve the Company will not be refunded if a transaction involved right-to-lease payments made from one private party to another private party that did not involve MP.

- Describe the type of purpose/s that land surrounding the leased lots that are sold would be used for?

Minnesota Power answered that it has no current plans for mining development. Active forest management, including harvest, is a critical tool for ecological benefit, local industry, and wildfire protection and those practices will continue at MP's discretion in a thoughtful and deliberate manner

- Specify what financial considerations related to leaseholders were considered in view of COVID-19 health pandemic adverse effects on the nation's economy and how this may hinder leaseholders' ability to purchase their lots?

Minnesota Power answered that, just like it had adhered to the eviction moratorium from Governor Tim Walz's executive order and voluntarily waived late fees for leaseholders who were behind on their rent, the Company will continue to work with leaseholders facing extenuating circumstances to develop reasonable outcomes whenever possible.

Information Request No. 2:

- Please indicate whether the 1854 Treaty Authority, the Bios Forte and Grand Portage Tribes, and any other Indian Tribes were consulted on the proposal for sale lands surrounding the hydro reservoirs, and if so, identify by name the tribes and parties that were consulted, the date, method of the consultation and outcome of the consultations with each group and/or, collectively.

Minnesota Power responded that it consulted with the 1854 Treaty Authority and the named Indian Tribes and included attachments in its e-assessment filing. Also Mr. Jill Hoppe, the Fond du Lac Historic Preservation Officer letter on behalf Fond du Lac Band of Lake Superior Chippewa date July 22, 2021 stated:

> … Considering best lease lot management practices and archaeological site monitoring, we concur that the Project will have no adverse effect on the NRHP eligible archaeological sites identified. For the prehistoric sites that are currently below the reservoir pool level, based on the location coordinates, we recommend that these sites are reassessed during a future drawdown to determine whether they remain present in submerged locations. Additionally, we do not have concerns in regard to the Project boundary adjustments but would appreciate continued updates and consultation on this Project and other Projects that impact Tribal lands.

Also, a review of the Tribal Consultation Summary letter sent to FERC Commission Files for St. Louis River Hydroelectric Project (P-2360-272) from Mr. Mark Carter of Minnesota Power dated June 17, 2021, listed Bis Forte Band (Catherine Chavers, Chairwoman), Menominee Indian Tribe (David Grignon), Keweenaw Bay Indian Community 9Warren Swartz, President), Grand Portage Band (Beth Dorst, Chairwoman), Fond du Lac (Kevin Dupuis, Chairperson), etc. These Tribes did not object to the Minnesota Power land sale proposal.

Other Leaseholders' Comments

Further, Staff reviewed the other leaseholders' (97 in total from September 16-October 1, 2021) comments to CAO and concludes that Minnesota Power answers provided to the Information Request essentially answered questions raised. The majority of the Commenters were concerned about the treatment of their lease improvement costs incurred and whether this would be applied to reduce the sale price of the lot should they purchase the lot. However, 28 (out of a total of 97, i.e., 30%) commenters are eager to have the process move forward. Generally, it appears that the majority would like to purchase their lot despite the apprehensions mentioned earlier. See the table below on the breakdown of the comments:

Figure 2: Leaseholders Comments After Required Comment Period on Minnesota Power' Land Sale Proposal -Docket No. E015/PA-20-675 (September 16 – October 1, 2021)

Description of Comments	Number Leaseholders who Commented	Percent of Comments
Reduce Lot sale price by **leasehold improvements** costs paid/incurred by leaseholder	41	42%
Reduce lot sale price by **2.5%/year** for 30 years for cost of leasehold improvements made by leaseholders	8	8%
Reduce lot sale price by balance of **right-to-lease bid** amount paid by leaseholder	10	10%
Proceed with the sale of land at the MP' proposed sale price	28	30%

Description of Comments	Number Leaseholders who Commented	Percent of Comments
Misc. (remove the 4% add EMV; credit for longevity of lease; reduce sale price due age of leaseholder; legality of sale proposal; delay proposal until at least 1000 leaseholders have been heard) ...	10	10%
Total	**97**	**100%**

Further, Minnesota Power submitted a Clarification Letter on September 1, 2021, which seem to contradict its earlier understanding in its Supplemental Comments of June 18, 2021., in which it accepted setting purchase price of the lots to 2021 EMV+4%, based on the result of its survey. However, MP now in the September 1, 2021, stated, "...Minnesota Power's interpretation that the intent was to use the 2020 assessment (2021 payable) plus 4% as the basis of the initial offer that would be made to all affected leaseholders. If so, Minnesota Power has no objection to this condition and appreciates the fairness it imparts to the overall process."

In fact, the Company in the June 18, 2021, Supplemental Comments noted that after reviewing the result of its survey as a consequence of Commissioner Tuma's Amended Decision Alternatives, stated thus:

> Minnesota Power received 313 responses to the survey. Only one response was allowed per lease lot. Of the responses received, 197 leaseholders (63 percent) preferred setting the purchase price at the 2021 EMV, plus 4 percent to account for the lag. Another 76 leaseholders (24 percent) preferred using the most current EMV, while 40 leaseholders (13 percent) indicated they were not interested in purchasing their lot at this time.[38]
>
> As a result of the survey results the Company is agreeable to setting the purchase price of lease lots to 2021 EMV plus 4 percent, with leaseholders having six months of to take advantage of this rate from the date the lot is offered for sale.

Staff does not understand why Minnesota Power changed its position as was previously expressed in its June 18, 2021. Further, Minnesota Power has not stated adequate reasoning for wanting to revert to 2020 EMV+4%, in view of the fact the result of its survey showed that a majority, 63% of leaseholders prefer setting the purchase price at 2021 EMV+4%.[39] Therefore, the Commission should not accept this change in position, since the use of 2021 EMV+4% for lot sale price is to account for time lag and time value of money, thereby assuring that ratepayers received equitable value from disposal of land asset by MP.

[38] Minnesota Power's Supplemental, p. 8.
[39] Id., at p. 3.

VII. Concluding Comment

PUC Staff generally supports the Department's overall recommendations in view of the amended decision alternatives filed on May 12, 2021 and appreciated the detailed review and analysis of Minnesota Power's Petition.

Further, staff notes the potential benefits to ratepayers via net proceeds credit that would inure to them, the increase in economic activities via construction and related jobs and the potential increases in county tax base[40] for the local economy that would assist funding of education and community projects.

VIII. Decision Alternatives

1. Grant a variance to Minn. Rules, part 7825.1400, that requires filing certain information on capital structure and the issuance of securities when transferring utility property, finding that the information is not relevant to this decision because the transactions will not affect MP's capital structure and the Company will not issues securities; the public interest will not be adversely affected; and that no other applicable law or statute will be violated by granting the variance.

2. Allow Minnesota Power to sell residential land lots surrounding its hydropower reservoirs to customers, with conditions. (MP, DOC)

3. Authorize Minnesota Power to defer all proceeds from the land sales into a regulatory liability that would be refunded (credited) to customers in either a future rate case or through the Renewable Resources Rider. (MP, DOC)

Include some of the following conditions on the approval of the land sales:

4. Allow Minnesota Power for each lot occupied by a leaseholder to offer the lot for sale at a price of 2021 Estimated Market Value (EMV) methodology plus four percent (4%) for a period of 6 months beginning when the lot is offered for sale, and the most current EMV thereafter. (MP, DOC)
   OR
5. Allow Minnesota Power to set the baseline value for each lot for sale on the county's EMV methodology plus 4% with sale being fully negotiated within the next two (2) years of the date of Commission' order in this docket. (MP)

6. Require that the sale of occupied lots be negotiated within three years of the date of the order in this docket. (DOC, MP)

7. For an occupied lot that is not sold to its current leaseholder within the permitted

[40] Minnesota Power's Petition, p. 12.

time frame, allow the leaseholder to arrange the sale of his or her personal property at any time during the remainder of the current lease, with the sale of the personal property conditioned on the buyer also purchasing the lot from Minnesota Power at a price equal to the then-current Estimated Market Value. (MP, DOC)

8. Direct MP to sell the lot at auction if a leaseholder does not purchase their lot and does not arrange the sale of their personal property by the end of his or her current lease. (DOC)

9. Permit Minnesota Power to seek variances to these requirements for specific, extraordinary circumstances. (DOC)

10. Allow Minnesota Power to offer lots without leaseholds for sale at a price no less than 25 percent over EMV and may only be sold at less than this amount for offers above of 4% of the current EMV if the offer is over three months old. (DOC, MP)

11. Direct Minnesota Power that, if lots without leaseholds are not sold, the Company will file a proposal for auction. (DOC) <u>or</u>

12. Allow Minnesota Power continued offering of the remaining lots two years after the date of the Commission's Order. (MP, DOC)

Other possible conditions suggested in public comments:

13. Direct Minnesota Power to refund cost of leasehold improvements at 2.5% per year capped at 30 years to leaseholders who were unable to purchase their lot within the lot sale completion window of three years, due to old age, terminal illness and/or, financial hardship from COVID-19 pandemic and if such lots were sold to other buyers.

14. Direct Minnesota Power to reduce lot sale price by 2.5%/year capped at 30 years for cost of leasehold improvements made five years by a leaseholder before the sale of the lot.

15. Direct Minnesota Power to ensure that leaseholders who paid MP directly ("right-to-lease" payment) to lease their lot receive a pro-rated benefit based on the amount of time remaining on their original lease term.

Compliance Filings:

16. Require Minnesota Power to provide annual compliance filings starting October 15, 2022, with verifiable data regarding lot sale transactions, including:
    i. the number of offers to current leaseholders made to date as of the time of the compliance filing;
    ii. the number of offers accepted by current leaseholders;

iii. the number of offers rejected by current leaseholders;
iv. the number of lots listed on the open real estate market;
v. the number of lots sold via the open real estate market. (Department, MP)

17. Require Minnesota Power to provide in the annual compliance filing, its land sales tracker balance, including:
    a. All additions to the tracker
    b. All deductions to the tracker (Department, MP)

18. Require Minnesota Power to provide in the annual compliance filing an estimate of anticipated amount of customer benefits. (Department, MP)

19. Direct Minnesota Power to track, at the most granular level possible, information on the costs and revenues associated with the lot sales, including
    a) for individual lot sales:
        i. Sale price;
        ii. List price, if different from sale price;
        iii. Estimated Market Value (EMV) of the land at the time of sale;
        iv. EMV of buildings/structures at the time of sale;
        v. All fees and expenses, (e.g., Title fees) and itemized by type;
        vi. Whether lot was purchased by current leaseholder. (Department, MP)

20. Direct Minnesota Power to disclose, in sufficient detail to determine whether they are internal costs included in base rates or external costs, all costs deducted from the tracker that are not attributable to individual lots sales. (Department, MP)