STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of a Request for a Minor Alteration to Great River Energy's 170 MW, Natural Gas-Fired, Simple Cycle Combustion Turbine Generator at its Cambridge 2 Peaking Plant Site near Cambridge, Isanti County, Minnesota	Docket No: ET2/GS-22-122

PETITION FOR REHEARING

CURE, Minnesota Center for Environmental Advocacy (MCEA), and Sierra Club North Star Chapter (collectively "Petitioners") hereby petition the Public Utilities Commission (Commission) for a rehearing or reconsideration of the Commission's order authorizing Great River Energy (applicant) to add diesel generation backup capabilities to the Cambridge 2 Peaking Plant (Order) and determining that the project does not require an EIS.[1] This petition is pursuant to Minnesota Statutes § 216B.27 and Minnesota Rules 7829.3000.

As written, the Order is inconsistent with Minnesota law and the Commission's own regulations regarding minor alterations to an existing large energy generating facility. Moreover, it is inconsistent with the intent behind the minor alteration rule and sets a dangerous precedent for future applications to add dirty fuels to existing peaking plants when the Legislature has required the opposite. To comply with the requirements of the law and remedy this error, the Commission should reconsider deeming the applicant's

[1] Order Approving Minor Alteration Application, *In the Matter of a Request for a Minor Alteration to Great River Energy's 170 MW, Natural Gas-Fired, Simple Cycle Combustion Turbine Generator at its Cambridge 2 Peaking Plant Site near Cambridge, Isanti County, Minnesota*, PUC Docket No. ET-2/GS-22-122, Dec. 7, 2023, eDockets No. 202312-201052-01 [hereinafter "Order"].

proposed project (Project) a minor alteration and should address other legal errors in the Order.

I. Minnesota Rules Require the Commission to Deny Applicant's Request for a Minor Alteration to its Cambridge 2 Peaking Plant.

Under Minnesota Rule 7850.4800, "no person may make a minor alteration to a large electric power generating plant" without Commission approval. The rules define a "minor alteration" as "a change in a large electric power generating plant or high voltage transmission line that does not result in significant changes in the human or environmental impact of the facility."

The original rulemaking documents for the minor alteration rule were prepared by the Environmental Quality Board (EQB), the state agency with authority over power plant siting at the time, which engaged in the rulemaking because of significant changes to the power plant siting statute in 2001.[2] "The Legislature was interested in ensuring that review of proposed large energy projects would be conducted expeditiously but comprehensively and with ample opportunities for public involvement."[3] EQB explained that the minor alteration rule is meant to cover "changes that are indeed minor" that the agency "would prefer not to have to deal with."[4]

a. The Proposed Changes to Cambridge 2 Will Result in Significant Changes in the Human and Environmental Impact of the Facility.

In March 2022, the applicant submitted a request to the Commission for a minor alteration to its existing Cambridge Peaking Plant. The application stated that the minor alteration "consists of adding fuel oil generation backup capabilities" to the existing 170-megawatt (MW) facility.[5] The activities to complete the project included (1) replacing Cambridge's natural gas unit with gas/fuel oil burners, and (2) constructing associated fuel

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[2] Minnesota Environmental Quality Board, *In the Matter of the Proposed Adoption of Amendments to the EQB Power Plant Siting Rules: Minnesota Rules chapter 4400*, Statement of Need and Reasonableness at 1, Dec. 2, 2003, https://www.eqb.state.mn.us/sites/default/files/documents/RulesSONAR.pdf [hereinafter "SONAR"]. The EQB still hosts this document on its website, but Petitioners were not aware of this until recently and apologize for not bringing it to the Commission's attention before the instant filing. The SONAR is attached as an appendix to this comment for ease of access.

[3] SONAR at 4.

[4] SONAR at 67.

[5] Application, *Application for a Minor Alteration to Great River Energy's 170 MW, Natural Gas- Fired, Simple Cycle Combustion Turbine Generator at its Cambridge 2 Peaking Plant Site near Cambridge, Isanti County, Minnesota*, at 1, PUC Docket No. ET-2/GS-22-122, Mar. 11, 2022, eDockets No. 20223-183729-01 [hereinafter "Application"].

and water tanks, pipes, pumps, and controls.[6] The associated fuel storage would consist of a 500,000-gallon tank and the associated water storage would consist of a 450,000-gallon tank.[7] Despite this, the application stated—without support—that "the modifications will not have a measurable impact on public health or safety."[8]

But as has been made apparent by the Environmental Assessment Worksheet and Petitioners' filings, the proposed changes to Cambridge—the construction of new dual-fuel burners, a 500,000-gallon fuel oil tank, and a 450,000-gallon water tank—would result in significant changes to the human and environmental impacts of the facility. Most concerningly, hourly air emissions for all pollutants will increase when the facility is burning fuel oil.[9] Annual air emissions for all pollutants will also increase if Cambridge burns fuel oil for the maximum permitted amount of 1,282 hours.[10] As the Environmental Assessment Worksheet (EAW) acknowledges, "Any USLD fuel usage would be additive to the status quo" in terms of air pollution.[11] Besides the project's air quality impacts, large oil-delivery truck traffic will permanently increase on the roads around the plant.[12] And the addition of the large fuel tank creates the potential for surface and groundwater impacts in the event of a tank rupture and 100- or 500-year storm event.[13]

b. A Project's Environmental Impacts Must be Determined Based on the Presumption of Actual Permitted Pollution.

By these terms and the points made by Petitioners in filings as well as the petition for an Environmental Assessment Worksheet,[14] it is clear that the Commission erred in finding that there is no potential for a significant change in the environment occasioned by this Project. As Petitioners have demonstrated, and the Order concedes, the only meaningful limit on the Project's ability to burn fuel oil is an air permit that allows the facility to operate on fuel oil for 1,282 hours per year. The Commission added a requirement that the applicant report back if the Project operates on fuel oil more than 24 hours in a year; but nothing in the Order sets a hard limit or requires additional permitting or environmental review should the Project exceed this threshold. Despite having the authority to place conditions on the operation of the plant that could help keep this alteration minor, the Commission opted to not place any limit on how much it could

[6] Application at 2.
[7] Application at 2.
[8] Application at 5.
[9] *Environmental Assessment Worksheet: Cambridge 2 Fuel Conversion*, at 31, PUC Docket No. ET-2/GS-22-122, July 11, 2022, eDockets No. 20237-197372-01 [hereinafter "EAW"]
[10] EAW at 31.
[11] EAW at 5.
[12] Application at 2; Order at 6.
[13] EAW at 20-21.
[14] While the Sierra Club has not filed as many comments as other Petitioners in this case, it was involved in the EAW Petition process and many Sierra Club members reside in the Cambridge community and are likely to be impacted by this Project.

operate, leaving this 1,282-hour limit as the de facto maximum potential run time for the plant. The Order's assertion that a 75-hour run time *only* leads to 12,829 short tons of CO2e per year is irrelevant when the potential run time would increase that to over 200,000 short tons of CO2e per year.

The recent decision in *State by Smart Growth Minneapolis v. City of Minneapolis*, No. 27-CV-18-19587, 2022 WL 17957328 (Minn. Ct. App. Dec. 27, 2022) and the district court below supports Petitioners' argument that the artificial cap in the Commission's analysis 75 hours is inappropriate without some evidence that the plant cannot legally run longer than that. In *Smart Growth*, the litigants argued that the City of Minneapolis's new zoning plan would cause pollution, impairment, and destruction if the plan was followed as written and there was a full build out of housing pursuant to the plan. The Court of Appeals agreed and found that the environmental effects of the City's 2040 plan "must be determined based on a presumption of a full build-out." Similarly, here Petitioners have argued that the impacts to be assessed for the "minor alteration" are the 1,282 hours of run time that are allowed before the plant runs up against its permit limit. The difference between how much the plant could operate under its air pollution permit and the 75-hour scenario is 1,207 hours, or more than 7 weeks. Under the reasoning of *Smart Growth*, the Commission should assess the potential change to the environment from this project according to what the Project can emit in terms of pollution, not what the Commission hopes it will limit itself to.

c. The Minor Alteration Exception is not Intended for Changes Such as Those Proposed by Applicant.

Relevant here, the Statement of Need and Reasonableness (SONAR) prepared by EQB regarding power plant siting rules describes a "change in fuel" as a "major change[]" that would require a full permitting decision, if proposed when reopening a closed power plant.[15] It also made clear that even small plants burning dirty fuel "will require more analysis than projects burning cleaner fuels."[16] Furthermore, the SONAR states that if a gas-fired peaking plant were to be altered "to change the fuel or increase the number of hours the plant is operated to make it a baseload plant. . . . a permit from the EQB is required."[17]

These portions of the SONAR suggest that fuel switching to a dirtier fuel than gas is by its very nature a major change that cannot be a "minor alteration." While the Commission retains some discretion to apply the standard to new factual situations, it was clear when these rules were written that a plant that burns coal or oil is more likely to impact the environment, and therefore a change to a plant to burn such fuel would require a more serious permitting action.

[15] SONAR at 24.
[16] SONAR at 58.
[17] SONAR at 72.

d. Both Longstanding and Recent Minnesota Law Demonstrate that this Proposed Change is Significant.

The Legislature has provided an expedited alternative permitting process for gas-only power plants in Minnesota Statue 216E.04, subd. 2(2). Indeed, when Cambridge was originally permitted, it was sped through the alternative process because, unlike other dual-fuel peaking plants proposed by this applicant, it was meant to only burn gas. However, the current proposal to change the plant to dual-fuel would allow a diesel-burning plant, retrofitted in 2023, to be permitted and operate without even going through the abbreviated alternative permitting process allowed by the Legislature in 2001. This is contrary to the SONAR, which, as quoted above, repeatedly stated that dirtier fuels require higher levels of permitting scrutiny.

Additionally, and consistent with the alternative review of gas plants, the Legislature has exempted conversions to natural gas from the requirements of a new Certificate of Need but has not provided any similar exemption for conversions from natural gas to a more polluting fuel source. The exemption, found at Minnesota Statutes 216B.243, subd. 8(5), shows legislative intent to promote fuel switching away from more polluting fuels towards natural gas. Thus, when the Commission is asked by an applicant to change a plant from 100 percent natural gas to a mix of gas and more-polluting diesel fuel oil, the statute would imply that this is neither encouraged nor insignificant. The SONAR citations above consistently suggest that a fuel change to a more polluting fuel should not be considered minor or be given an authorization without full participation of the public in the normal permitting process.

This is not the only indicator from the Legislature that this is not a "minor alteration" under the standard authorized by statute. More recently, the Minnesota Legislature has tasked the Commission with removing or mitigating carbon-burning energy generation sources from Minnesota's grid by 2040 in what is colloquially called the "100 percent" act.[18] As a result, the Legislature flagged for the Commission that regulated utilities must rapidly decarbonize the electrical grid. The Commission has only begun the process of defining what "carbon-free" energy means and will have the hard work of applying that definition to future dockets from this applicant and others.

It is entirely contrary to the Legislature's command for the Commission to downplay a new oil-burning energy resource on the grid as a minor alteration. By definition, any new plant that makes it harder to reach 100 percent on time is a hindrance to that duty. The Commission should not rush to approve a new oil plant without procedure akin to a real permitting process, especially when it has a pending docket whose purpose is to further define the relevant "carbon free" law. To vet whether this project is justifiable under "100 percent" the Commission must put it through the normal permitting process.

[18] Laws of Minnesota 2023, chapter 7.

e. Examples of the Commission's Approvals of Prior Minor Alterations Do Not Support the Use of the Exception Here.

All prior approvals minor alterations at the Commission have applied to noncontroversial small changes to power plants or transmission lines that do not include changing the fuel type of a power plant. This Commission precedent is consistent with the original intent of the regulation as described in the SONAR for these rules.

Petitioner MCEA explained in comments submitted in June of 2023 that the minor alteration rule has never been used to alter a large electric power generating plant.[19] Of the twenty-seven approved minor alterations since 2009: "Twenty-three of the cases pertained to minor changes to a transmission line route, three relate to changes to substations, and one involved a new switch station."[20] By contrast, and as explained by MCEA in its comment, changes like the one planned for this Project are deemed "major" and go through a permitting process both at the Minnesota Commission and equivalent regulators in other states.[21]

These findings highlighted by MCEA's comment are consistent with the intent found in the SONAR for the minor alteration rule, which appears to assume that this rule would be used for upgrades to high-voltage transmission lines (HVTLs) but not for something as major as fuel changes at a power plant. All minor alterations noted in the SONAR were changes to HVTLs, with only one power plant minor alteration that has no impact on the plant's emissions or discharge of pollution—moving a fence line at Sherco.[22] The document repeatedly mentions how, if there is no significant change in environmental impact from a HVTL, upgrading or minor relocation of a line could be a minor alteration under this rule.[23] Throughout its discussion the SONAR never suggests in any way that fuel switching to a dirtier fuel is expected to be a minor alteration, but rather would require a new permitting action. This is consistent with how the Commission has applied the rule up until this proceeding.

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[19] MCEA initial Comment, *In the Matter of a Request for a Minor Alteration to Great River Energy's 170 MW, Natural Gas- Fired, Simple Cycle Combustion Turbine Generator at its Cambridge 2 Peaking Plant Site near Cambridge, Isanti County, Minnesota*, at 9-10, PUC Docket No. ET-2/GS-22-122, June 20, 2023, eDockets No. 20236-196676-01 [hereinafter "MCEA Comment"].

[20] MCEA Comment at 10.

[21] MCEA Comment at 10–11.

[22] SONAR at 67 ("The only minor alteration for a LEPGP was a small expansion of the boundaries of the Sherco plant in Sherburne County.").

[23] *See* SONAR at 15, 20 (describing moving HVTL structures due to road construction as a minor alteration).

f. Ordering an Environmental Assessment Worksheet did not Cure the Commission's Error.

Nothing in the EAW preparation process makes up for the fact that the Commission has allowed this project to circumvent the normal permitting process for an oil-burning power plant.

The SONAR for this rule clarifies that "An Environmental Assessment is different from an Environmental Assessment Worksheet (EAW). An EA will consider alternatives and mitigation. An EAW does not."[24] By its terms all an EAW can do is inform the Commission's decision on whether an EIS is required; it is not a replacement for a different type of environmental review with opportunities for meaningful public engagement as well as more enforceable mitigation measures in light of public input.

Notably, while the EAW did allow some opportunity for public comment, it did not afford the residents of the Cambridge area a public meeting that would have alerted far more of them to the implications of the Project. It did not allow Minnesotans to offer potential alternatives for review, nor did it allow for a public hearing of this controversial Project before an Administrative Law Judge. The public was shortchanged by the lack of notice, the absence of public meetings and hearings, as well as being cut out of scoping of environmental review with the potential for substantive mitigation controls and permit conditions.

g. Allowing this Change as a Minor Alteration is Bad Policy.

The SONAR for this rule describes the minor alteration rule as a "speedy and easy process" because even minor changes in existing power plants require agency approval of some sort.[25] A major theme of the SONAR is the intent for the permitting process to be responsive to public opposition and controversy surrounding a particular project.[26] But because the Commission has taken the wrong path, this "minor alteration" process has become a confusing imbroglio instead of an expedited process. Worse yet, the process has not been responsive to public opposition and did not allow for public meetings or hearings in the relevant community as suggested by the SONAR.

If the Commission had at the outset rejected the minor alteration consistent with the rule, the applicant could have easily already proceeded through the full permitting

[24] SONAR at 54.
[25] SONAR at 66.
[26] *See* SONAR at 59 (asserting that an Administrative Law Judge will be needed as a hearing examiner "with any controversial project" undergoing the alternative review process); SONAR at 7 ("How much it will cost to conduct the environmental review and hold the public hearings and perform the other procedural steps will depend on the size of the project and the controversy involved. Smaller projects, with little controversy, will involve less costs than the bigger projects."); SONAR at 67 ("While it is likely that no one is going to object to a change in a facility that is indeed minor, the EQB cannot know that unless some effort is made to notify interested persons of the proposed change.").

process or the alternative process, in one year or six months respectively. But by allowing this application to languish in the wrong permitting track, the Commission has wasted time without achieving the intent of the rulemaking process—a transparent and efficient process for fully reviewing the validity of applications.

Because the Commission has failed to go through the normal permitting process and allowed the applicant to make unsubstantiated claims about the project, it assumes without establishing factual support that this project is in compliance with the law. The Order states that this project is consistent with law "when viewed in the larger context of the applicant's overall energy portfolio,"[27] but this project is not being vetted or assessed in the company's Integrated Resource Plan where such a claim could be substantiated. Similarly, both the Commission and the Department of Commerce's environmental review staff assume that this project is necessary to assure reliability without any proof of that need through a Certificate of Need process.[28] None of these conclusions have been supported by evidence or agency oversight on the record and in public view.

By using a back-door process to approve a new fuel at this plant the Commission relies entirely on the applicant's conclusions about the necessity of the project without putting it through any of the existing vetting structures that are required for such expensive investments in utility infrastructure. The Order's conclusion that "the Project may contribute to achieving Minnesota's energy goals"[29] is cold comfort since it also may not so contribute—the Commission ultimately doesn't know because it never developed a factual record on this issue.

II. The Commission Erred by Finding that an Oil-fired Power Plant Does Not Significantly Impact the Environment, and by Deferring to the Applicant's Cost Assertion.

For the reasons stated above regarding the error in granting the minor alteration request, the Commission has also failed to correctly assess the potential for significant environmental impacts of the Project. Due to the concerning impacts to air, water, and climate detailed in the record, the Commission should have ordered an EIS rather than finding no potential for significant impacts. The fact that this Project is also inconsistent with the 100 percent carbon-free law articulated by the Legislature is additional proof that this Project does have the potential for significant impacts to the environment that are not sufficiently mitigated by the facility's air permit or the Commission's after-the-fact reporting condition that requires harm to occur and before the applicant self-reports the following summer. Asking for forgiveness months later is not enforceable mitigation.

The Minnesota Environmental Policy Act (MEPA) requires responsible governmental units like the Commission to assess whether a project has the potential for

[27] Order at 14.
[28] *See, e.g.*, Order at 14 ("the Commission notes that the Project will provide benefits in terms of reliability, resiliency, and affordability.").
[29] Order at 14.

significant environmental effects, and, if so, prepare an EIS.[30] The EAW for this Project does not adequately consider the cumulative impacts of additional emissions from the Project,[31] and the Commission failed to account for these potentially significant effects in determining that an EIS was not required.

Moreover, the Commission risks violating MEPA by approving of an alternative that increases pollution for economic reasons alone. The Order states that the applicant considered but rejected an alternative of increasing energy storage at the site of the Project instead of going ahead with the project.[32] The Commission's justification for not further considering energy storage is: "Ultimately, GRE deemed the energy storage system too costly to pursue." But this is not a valid reason for the Commission to select the Project as a preferred alternative, as this reason for selecting an alternative is explicitly prohibited by MEPA in Minnesota Statute section 116D.04, Subd. 6. The original SONAR prepared by EQB for these rules acknowledges that "costs are an important part of the application" but nevertheless do not supplant the requirements of MEPA to not reject environmentally preferable alternatives for "economic considerations alone."[33]

III. The Commission Erred by Not Considering and Evaluating the Environmental Costs of this Project.

As asserted by comments from the public, Minnesota Statutes 216B.2422, Sub. 3, requires the Commission to establish, and the applicant to use, environmental cost values "when evaluating and selecting resource options in all proceedings before the commission." This statutory requirement has not been met even though this minor alteration process is an exercise of the applicant and Commission selecting between two resource options—namely, what to burn at the peaking plant in Cambridge, Minnesota. When the Commission reconsiders the above issues, it should also reconsider the failure to use environmental costs in this proceeding as required by statute.

IV. To Comply with the Law, the Commission Should Reconsider its Decision.

To cure the defects described above, the Commission should reconsider its approval of the applicant's request for a minor alteration. In doing so, the Commission will comply with Minnesota Rule 7850.4800.

Denying this request for a minor alteration is also consistent with caselaw, the intent behind these rules, and the Commission's previous treatment of such requests. For the reasons stated above, Petitioners respectfully request that the Commission grant this petition for a rehearing or reconsideration of the matters raised herein.

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[30] Minn. Stat. § 116D.04, subd. 2a(a).

[31] The Order states that CURE "acknowledg[ed] that the EAW appears to be complete and accurate," Order at 7, but Petitioners' prior comments highlighted the need for additional analysis of cumulative impacts.

[32] Order at 14.

[33] SONAR at 30.

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Respectfully submitted,

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