

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

MPUC Docket Nos. E-015/GR-21-335,
E-015/GR-23-155

**MINNESOTA POWER’S REPLY
COMMENTS REGARDING THE
COMPANY’S PREPAID PENSION
ASSET**

INTRODUCTION

Minnesota Power (or the “Company”) submits these Reply Comments in response to the Comments of the Minnesota Department of Commerce (“Department”), the Large Power Intervenors (“LPI”), and the Office of the Attorney General – Residential Utilities Division (“OAG”) filed on April 7, 2025.¹ As explained below, Minnesota Power does not oppose the Department and LPI’s recommendation for the Minnesota Public Utilities Commission (“Commission”) to make its final decision on the Company’s prepaid pension asset through the notice and comment process. However, for the reasons set forth in Minnesota Power’s Comments and herein, no additional process is needed.

RESPONSE TO COMMENTS

1. Summary of Relevant Comments

The Department comments that the Commission should reopen the record in the 2021 Rate Case to make additional findings regarding Minnesota Power’s prepaid pension asset.² According to the Department, in the 2021 Rate Case, the parties primarily addressed whether the prepaid

¹ While the Department filed its Comments in MPUC Docket No. E-015/GR-21-335 on April 7, 2025, the Department did not file its Comments in MPUC Docket No. E-015/GR-23-155 until April 8, 2025, after the close of the comment period.

² Initial Comments of the Minnesota Department of Commerce (“Department Comments”), 2-3.

pension asset should be recognized but did not evaluate “secondary issues such as the asset size, contributions required by federal law, and possible allocation between ratepayers and shareholders.”³ The Department claims that the Commission needs to address these issues before it can make a final decision on the prepaid pension asset.⁴ For this purpose, the Department requests authorization to seek technical assistance.⁵ The Department further states that the Commission should make its final decision through notice and comment instead of remanding to the administrative law judge (“ALJ”).⁶

LPI, however, comments that the Commission should not reopen the record in the 2021 Rate Case and should instead supplement its decision in the case with evidence from the existing record.⁷ LPI also states that the Commission should use the notice and comment process.⁸

The OAG takes no position on whether the Commission should reopen the record in the 2021 Rate Case or whether the prepaid pension asset issue should be remanded to the ALJ if the record is reopened.⁹

2. Minnesota Power’s Response

Minnesota Power is open to the Commission making its final decision on the Company’s prepaid pension asset through the notice and comment process. However, this process should be

³ *Id.* at 3.

⁴ *Id.* The ALJ already made detailed findings regarding these issues in the ALJ Report. *See* Findings of Fact, Conclusions of Law, and Recommendations (“ALJ Report”), 53-57, 59-61 (discussing and making findings as to the calculated value of the prepaid pension asset, the federal laws and rules that determine the Company’s pension plan contributions and expense levels, and the fact that the entire prepaid pension asset that the Company seeks to include in rate base is funded by investors).

⁵ Department Comments at 3.

⁶ *Id.* at 3-5.

⁷ Initial Comment (“LPI Comments”), 3. LPI spends much of its Comments restating the arguments that it made before the ALJ, particularly its argument that Minnesota Power’s prepaid pension asset is not funded by shareholders. LPI recommends that the Commission simply supplement its decision and deny inclusion of the prepaid pension asset in rate base. However, LPI’s Comments not only go beyond the topics noticed for comment but also overlook that the ALJ specifically found that “[t]he entire prepaid pension asset that the Company seeks to include in rate base resulted from investor contributions as discussed in Minnesota Power’s Comments.” ALJ Report at ¶ 257.

⁸ LPI Comments at 1, 9.

⁹ Comments of the Office of the Attorney General—Residential Utilities Division, 3.

limited to the parties commenting on how the Commission should apply the Court of Appeals’ decision to the existing record. This process does not need to be the extended undertaking proposed by the Department, and it should not be used to supplement an already robust record with new evidence and issues. As explained in Minnesota Power’s Comments, an extensive and detailed record was developed before the ALJ in the 2021 Rate Case, and pursuant to *In re Surveillance & Integrity Review Section*, the ALJ Report constitutes the final agency decision, and further fact-finding or development of the existing, closed record would be improper.¹⁰

Had the Commission originally adopted the ALJ’s determination that prepaid pension assets should be included in rate base, parties that disagreed would not have had a right to submit additional factual evidence or expert testimony that they could have raised (but chose not to) during the contested case proceeding. Rather, the Commission would have continued its analysis of the extensive existing record to determine the amount of prepaid pension assets that should be included in rate base. Nothing in the Court of Appeals’ reversal and remand would support reopening the fact-finding process at this late stage in the proceeding.

The Court of Appeals’ decision reversed the Commission’s decision to exclude Minnesota Power’s prepaid pension asset “categorically and entirely” from rate base as not supported by substantial evidence and as arbitrary and capricious.¹¹ The Court of Appeals held that “a utility’s mandatory contributions to pension plans are an ‘expense[] of a capital nature’ to which the commission must give ‘due consideration’ in determining the utility’s rate base under Minn. Stat. § 216B.16, subd. 6.”¹² The Court of Appeals’ decision did not create new issues of fact for which

¹⁰ Minnesota Power’s Comments Regarding the Company’s Prepaid Pension Asset (“Minnesota Power Comments”), 4-9.

¹¹ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Nos. A23-0867, A23-0871, A23-1957, Opinion, 16-27 (Sept. 9, 2024).

¹² *Id.* at 35.

there is an inadequate record. The Department and other parties had ample opportunity before the ALJ to develop the record, including introducing evidence on the issues that the Department now raises, which are unrelated to the narrow issue of whether the prepaid pension asset consists of investor-supplied funds.¹³ Attempting to supplement the existing record with new evidence and issues at this late stage would be inappropriate and a circumvention of *In re Surveillance & Integrity Review Section*.

Minnesota Power notes that while the parties differ as to the applicability of *In re Surveillance & Integrity Review Section*, no party recommends that the Commission remand this matter to the ALJ. As stated in Minnesota Power's Comments, the Company agrees that such remand would be improper.¹⁴ In addition, no party recommends that the Commission use a different process to determine Minnesota Power's prepaid pension asset in the 2021 Rate Case compared to the 2023 Rate Case. The Company agrees that the Commission can resolve both matters through a single notice and comment process.

With respect to the Department's request for authorization to seek technical assistance, this request raises additional issues regarding fairness and due process concerns.¹⁵ The Department's request seems to suggest that the Department should have the opportunity to engage an outside expert to introduce new evidence, but does not identify timelines for a proceeding that was initiated

¹³ In its Opinion, the Court of Appeals remanded only one issue for the Commission's review: "The parties dispute the extent to which Minnesota Power's prepaid pension asset is attributable to shareholder contributions as opposed to market returns or negative pension expense. The [C]ommission is charged with resolving this dispute as part of its overall duty to determine fair and just rates." *Id.* at 27.

¹⁴ Minnesota Power Comments at 8-9.

¹⁵ See *In re Amalgamated Food Handlers*, 70 N.W.2d 267 272 (Minn. 1955) ("The requirement of due process means opportunity for a hearing, i.e., opportunity to be present during the taking of testimony or evidence, to know the nature and contents of all evidence adduced in the matter, and to present any relevant contentions and evidence the party may have."); *In the Matter of the Complaint Regarding the Annexation of a Portion of the Service Territory of People's Cooperative Power Association by the City of Rochester*, MPUC Docket No. E-132, 299/SA-88-270, Order Affirming and Clarifying Earlier Order, 6 (Oct. 29, 1990) (finding that due process was satisfied where all parties had full opportunity to present testimony).

42 months ago. The Department makes no mention of whether other parties will be able to engage their own outside experts or otherwise rebut the Department's evidence. Additionally, the introduction of new witnesses and evidence, including potentially supplemental and supplemental rebuttal testimony, would seemingly transform a notice and comment process into more of a contested case despite considerations of *In re Surveillance & Integrity Review Section*.

Lastly, the Department's request for authorization to seek technical assistance would unnecessarily prolong resolution of the prepaid pension asset issue. The Request for Proposals process often takes several months in addition to the time necessary for parties to prepare and file testimony. Indeed, the Department's proposed notice and comment timeline, with initial comments being due no earlier than October 24, 2025 and reply comments being due no earlier than December 5, 2025, means that it will likely be nearly a year at the earliest before this matter is resolved.

CONCLUSION

Minnesota Power appreciates the opportunity to provide these Reply Comments regarding the topics noticed for comment by the Commission and looks forward to the Commission's consideration of this matter. As explained above, regarding the process the Commission should use to make its final decision on the Company's prepaid pension asset, Minnesota Power can support a notice and comment process that would allow the parties to comment on how the Commission should apply the Court of Appeals' decision to the existing record. However, regarding whether the Department should be authorized to seek technical assistance, this would not be appropriate, particularly for issues not pertinent to the Court of Appeals' remand.¹⁶ Finally, regarding whether the Commission should use a different process to determine the Company's

¹⁶ See Opinion at 27.

prepaid pension asset in the 2021 Rate Case compared to the 2023 Rate Case, Minnesota Power agrees that the Commission can resolve both these matters through a single notice and comment process.

Dated: April 22, 2025

Respectfully submitted,

/s/ Matthew R. Brodin

Matthew R. Brodin

Senior Attorney

30 West Superior Street

Duluth, MN 55802-2093

Telephone: (218) 355-3152

mbrodin@allete.com