

**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 Utility
Service in Minnesota

MPUC Docket No. E-015/GR-21-335

**MINNESOTA POWER'S
ANSWER TO LARGE POWER
INTERVENORS' PETITION FOR
RECONSIDERATION**

INTRODUCTION

Minnesota Power (or the “Company”) submits this Answer to the Large Power Intervenors’ (“LPI”) Petition for Reconsideration (“Petition”) of the September 29, 2023 Order Approving Compliance Filing (“Compliance Filing Order”) of the Minnesota Public Utilities Commission (“Commission”). In its Petition, LPI argues that “the Compliance Filing Order approved an interim-rate refund that is inconsistent with the plain language of state law and long-standing appellate precedent.”¹ Because LPI’s Petition fails to meet the Commission’s standard for reconsideration and is incorrect with respect to applicable law, it should be denied. The Compliance Filing Order, which approved the Company’s Interim Rate Refund Plan, is well-reasoned, supported by the record, and results in correct interim rate refund amounts for Minnesota Power’s customers.² Minnesota Power also respectfully requests that the Commission expedite its decision on LPI’s Petition so that the consolidated appeal³ of the 2021 Rate Case, which has been stayed at LPI’s request since June 30, 2023, may move forward.

RESPONSE TO LPI

Petitions for reconsideration of Commission orders are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. Pursuant to Minn. Stat. § 216B.27, subd. 3, the

¹ LPI Petition at 1.

² In its Compliance Filing Order, the Commission also did not accept the Minnesota Department of Commerce, Division of Energy Resources’ recommended modification to the Company’s Interim Rate Refund Plan. The Department did not support LPI’s position and reconsideration was not sought on the basis of the Department’s positions.

³ Case Nos. A23-0871 and A230-0867.

Commission may reverse, change, modify, or suspend its original decision if, after rehearing, it finds its decision unlawful or unreasonable. The Commission has granted reconsideration when a motion for reconsideration: (1) raises new issues; (2) points to new and relevant evidence; (3) exposes errors or ambiguities in the prior decision; (4) persuades the Commission to reconsider; or (5) where the prior decision was inconsistent with the facts, the law, or the public interest.⁴ Here, LPI's Petition, which largely renews its arguments that the Commission already considered and rejected in rendering its Compliance Filing Order, does not meet any of the Commission's standards for reconsideration and should be denied.

LPI's disagreement with the Commission's Compliance Filing Order appears to essentially reflect its continued disagreement with the Commission's decision to account for known and measurable changes associated with revenues from ST Paper and Cenovus for the purposes of calculating the interim rate refund. However, this issue was previously the subject of Minnesota Power's March 20, 2023 Petition for Reconsideration and Clarification, and LPI's response did not oppose recognition that ST Paper/Cenovus did not restart operations during the 2022 test year.⁵ Further, the Commission previously addressed this issue in its May 15, 2023 Order Denying Petitions for Reconsideration and Granting, in Part, Requests for Clarification ("Reconsideration Order"), where it "[g]rant[ed] Minnesota Power's clarification request that ST Paper and Cenovus sales should be regarded as a known and measurable change."⁶ Thus, LPI did not take issue with this determination when it was made.

Nevertheless, in its July 17, 2023 response to Minnesota Power's subsequent Interim Rate Refund Plan, LPI argued that Minnesota Power should include additional ST

⁴ *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, Docket No. E015/GR16-664, ORDER GRANTING RECONSIDERATION IN PART, REVISION MARCH 12 2018 ORDER, AND OTHERWISE DENYING RECONSIDERATION PETITIONS at 2, 5 (May 29, 2018); see also *In re Minnesota Power's 2015 Renewable Res. Rider and Renewable Factor*, Docket No. E015/M-14-962, ORDER DENYING MINNESOTA POWER'S PETITION FOR RECONSIDERATION AND GRANTING RECONSIDERATION FOR FURTHER PROCEEDINGS at 1 (Feb. 14, 2017).

⁵ LPI Answer to Petition for Reconsideration and Clarification (Mar. 30, 2023) (eDocket No. [20233-194356-02](#)).

⁶ Reconsideration Order at 4. The Commission went on to order that "[t]he Company may exclude sales revenue not received from ST Paper and Cenovus during the period of interim rates; Minnesota Power shall file in a compliance filing its interim rate calculation, as described in the Company's clarification request, for final Commission approval." *Id.*

Paper and Cenovus revenues in 2022 and 2023 (thereby increasing the overcollection amount and refund to non-residential customers) despite the established, uncontested fact that these additional revenues were never collected by the Company during the 2022 and 2023 calendar years. In its July 31, 2023 response to LPI's argument, Minnesota Power explained that it is reasonable for the Commission to account for known and measurable changes to ST Paper and Cenovus revenues in 2022 and 2023, and that past Commission decisions have also reflected known and measurable changes to test year revenues (or cost of service) in order to ensure that rates are just and reasonable both for the interim rate period and for final rates going forward.⁷ The Commission agreed with Minnesota Power and accounted for its previous decision to reflect known and measurable changes associated with revenues from ST Paper and Cenovus in approving the Company's Interim Rate Refund Plan, rejecting LPI's argument to the contrary.⁸

Most of LPI's reconsideration request simply repeats these prior arguments, and fails to offer evidence that the Commission's decision, which properly accounts for the revenues Minnesota Power did and did not collect during the interim period, results in rates that are not just and reasonable or otherwise departs from past practice.

LPI continues to argue that the Commission's decision is misaligned with the law governing interim rate refunds, on the grounds that Minn. Stat. § 216B.16, subd. 3(c) states that "[i]f, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule." LPI then goes on to argue that "state law directs the Commission to compare two sets of rates, and only two sets of rates—interim rates and rates in the final determination"⁹ But

⁷ See, e.g., *In re Application of N. States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in Minn.*, Docket No. E002/GR-05-1428, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; ORDER OPENING INVESTIGATION at 7-12 (Sept. 1, 2006) (stating that "[i]n this case, the Commission agrees with the ALJ that there are compelling reasons to account for the return of Flint Hills as a full requirements customer on January 1, 2007, the day following the close of the test-year. The Commission finds in this matter that not recognizing the return of Flint Hills, Xcel's largest customer, in base rates, clearly would make the test year unreliable."); see also *In re Petition by Otter Tail Power Co. for Auth. to Increase Rates for Elec. Serv. in Minn.*, Docket No. E017/GR-86-380, FINDINGS AND CONCLUSIONS at 44-45 (Apr. 27, 1987) (stating "that the Tax Act is a known and measurable change which is likely to have a significant effect on OTP's operating expenses, which must be reflected in rates effective July 1, 1987.").

⁸ Compliance Filing Order at 5-6.

⁹ LPI Petition at 5-6.

even if LPI's statement were correct, LPI fails to show that the Commission is ultimately establishing anything other than the interim rates the Company has been collecting since January 1, 2022. Nor does this statutory language require final rates to be calculated on the basis of any particular set of revenues or preclude the Commission from implementing a known and measurable adjustment to revenues in order to establish the test year final rates and revenue requirement.

Nonetheless, in its Petition, LPI supplements the same arguments included in its July 17, 2023 comments by pointing to a 1989 decision of the Minnesota Court of Appeals, *In re Petition of Minn. Power & Light Co.*, 435 N.W.2d 550, 554-59 (Minn. Ct. App. 1989).¹⁰ In that decision, the court addressed three separate issues, which LPI attempts to tie together as a single indicator that there can be no known and measurable adjustments to the test year. But the issues the court addressed in that case do not bear on the situation here. First, the court simply affirmed the Commission's decision that if final rates are lower than those in effect immediately prior to the establishment of interim rates, then the prior effective rates do not act as a "floor" for setting rates in the current proceeding.¹¹ This decision has nothing to do with this case, as both interim and final rates are higher than the rates previously in effect. Second, the court affirmed that the interim rate period does not establish a separate substantive period for establishing rates.¹² This is likewise inapplicable, as the Company has never suggested, and the Commission has not found, that final rates in this case should be based on a separate interim rate cost of service study. Rather, the Company has collected a set amount of interim revenues based on the interim rates established at the outset of the case.

Finally, in the appellate case LPI cites, the court of appeals affirmed the Commission's rejection of Minnesota Power's proposal to make certain cost of capital and O&M adjustments to prospective rates for purposes of determining interim rate refunds, on the grounds that the adjustments were not sufficiently well-established in type and magnitude *on that record*.¹³ The court of appeals also noted with approval the Commission's statement that it *has* made adjustments when "there is a compelling need

¹⁰ LPI Petition at 7-10.

¹¹ *In re Petition of Minn. Power & Light Co.*, 435 N.W.2d at 554-56.

¹² *Id.* at 556-57.

¹³ *Id.* at 557-59.

to do so” and that “the Commission has adjusted for changes in the past only when their certainty and magnitude would otherwise make the test year process unreliable.”¹⁴ Further, the court explicitly cited to prior court of appeals decisions discussing the test year process that stated “Based upon the evidence presented, the regulatory body undertakes a reasoned exercise of its discretion in altering test-year data *to reflect changes of known magnitude occurring subsequent to the test year.*”¹⁵ Finally, in each of these instances, the court did not find that the Commission could not have made different decisions, but rather affirmed that the Commission was permitted to make the determinations it did.

In the instant case, the Commission determined that the record supported accounting for known and measurable changes to ST Paper and Cenovus revenues in order to ensure just and reasonable rates:

Because these two customers were not operating during most of the interim rate period, the Company requested that the Commission clarify that the Company may exclude, when calculating interim rate refunds, sales revenues not collected from these customers during the period of interim rates; the Company also agreed, however, to account for actual revenues received from these customers for service provided during the interim rate period, which is ongoing. Setting reasonable rates required accounting for these known and measurable changes to revenues for calculating the interim rate refund because these were revenues that the Company never received.

The Commission concurs with the Company that, for purposes of calculating interim rate refunds, it would not be reasonable to impute to the Company revenues not collected during the interim rate period. The Commission will therefore require the Company to include in a compliance filing its interim rate calculation, as described in its clarification request.¹⁶

¹⁴ See *id.* at 558.

¹⁵ *Id.* at 556 (quoting *Nw. Bell Tel. Co. v. State*, 253 N.W.2d 815, 822 (Minn. 1977) (emphasis added)).

¹⁶ Reconsideration Order at 3.

The Commission's decision was sound, reasonable, based on the record and supported by substantial evidence, and consistent with Commission practice, as the Company further supported in its July 31, 2023 reply comments. It is telling that LPI has never claimed ST Paper and Cenovus revenues *were* operating or generating different revenues during the period in question, and did not object to the Commission's undisputed factual determinations with respect to establishing the Company's final rates and revenues. Finally, LPI's Petition should be denied as it points to no new facts or issues or otherwise supports why the Commission's decision is unlawful.

CONCLUSION

The Company respectively recommends that the Commission deny LPI's Petition on an expedited basis now that final rates have been implemented and so that the consolidated appeal of the 2021 Rate Case may timely move forward.

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Respectfully submitted,

MINNESOTA POWER

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