



# Minnesota Center for Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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August 5, 2014

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, MN 55101-2147

**VIA ELECTRONIC FILING**

*Re: In the Matter of Dairyland Power Cooperative's Optional Integrated  
Resource Plan Compliance  
PUC Docket No. ET3/RP-14-572*

Dear Dr. Haar,

In connection to the above-referenced matter enclosed are Comments filed on behalf of Minnesota Center for Environmental Advocacy. Also attached is the Affidavit of Service.

Sincerely,

/s/ Leigh Currie  
Leigh Currie  
Staff Attorney

Enclosures

cc: Attached Service list

STATE OF MINNESOTA  
MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Dairyland Power  
Cooperative's Optional Integrated Resource  
Plan Compliance

**AFFIDAVIT OF SERVICE**

PUC Docket No. E017/RP-13-961

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STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF RAMSEY    )

Leah Harms being duly sworn, says that on the 5<sup>th</sup> day of August, 2014 she served via U.S. mail and e-dockets the following:

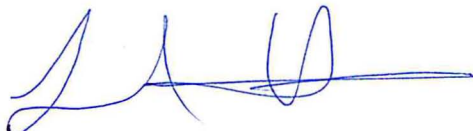
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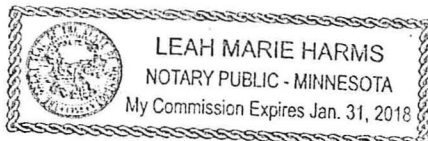
on the following persons, in this action, by filing through e-dockets or mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at St. Paul, Minnesota, directed to said persons at the last known mailing address of said persons:

Attached Service List.

  
\_\_\_\_\_  
Leigh Currie

Subscribed and sworn to before me  
this 5<sup>th</sup> day of August, 2014

  
\_\_\_\_\_  
Leah Harms



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**In the Matter of Dairyland Power  
Cooperative’s Optional Integrated  
Resource Plan Compliance**

**MPUC Docket No. ET3/RP-14-572**

**INITIAL COMMENTS ON DAIRYLAND POWER COOPERATIVE’S OPTIONAL  
INTEGRATED RESOURCE PLAN COMPLIANCE**

**I. Introduction**

The Minnesota Center for Environmental Advocacy (“MCEA”) submits these initial comments in response to Dairyland Power Cooperative’s (“Dairyland”) Integrated Resource Plan (“IRP”) report filed June 30, 2014. The Minnesota Public Utilities Commission (“Commission”) specifically asked for comments on “[w]hether legislation amending Minn. Stat. § 216B.2422, subd. 2c requires Dairyland to include information regarding progress on its system toward achieving the state greenhouse gas emission reduction goals established in Minn. Stat. § 216H.02,” and “[a]ny other analyses or recommendations in the Dairyland filing.”

As explained below, MCEA asserts that Dairyland is statutorily required to comply with Minnesota Statute section 216B.2422, subdivision 2c. MCEA additionally provides comments on Dairyland’s assertion that it is not required to consider the environmental costs of electricity generation as required by Minnesota Statute section 216B.2422, subdivision 3. MCEA lastly asserts that, even if the Commission disagrees with MCEA’s interpretation of the applicability these statutory requirements, the Commission has the discretion and authority to order Dairyland

to supply the same substantive information as required under these statutes and that doing so will ensure that the Commission is furthering the identified policies of the Minnesota Legislature.

**II. Dairyland Cooperative Is Required To Include Information Regarding Its Progress Toward Achieving Minnesota’s Greenhouse Gas Emission Reduction Goals In Its IRP Compliance Report.**

Dairyland did not include any discussion of Minnesota’s greenhouse gas emissions reduction goals<sup>1</sup> in its filing. The requirement to include such a discussion in all IRP filings is a recent addition to Minnesota law. In 2014, the legislature amended Minnesota Statutes § 216B.2422 by adding subdivision 2c, which states:

Each utility required to file a resource plan under subdivision 2 shall include in the filing a narrative identifying and describing the costs, opportunities, and technical barriers to the utility continuing to make progress on its system toward achieving the state greenhouse gas emission reduction goals established in section 216H.02, subdivision 1, and the technologies, alternatives, and steps the utility is considering to address those opportunities and barriers.

The requirement contained in Minnesota Statute section 216B.2422, subdivision 2c is specific to those utilities “required to file a resource plan under subdivision 2.” Dairyland is one of the utilities required to file a resource plan under subdivision 2. Subdivision 2 states that “[a] utility shall file a resource plan with the commission,” and a “utility,” in turn, is defined as “an entity with the capability of generating 100,000 kilowatts or more of electric power and serving, either directly or indirectly, the needs of 10,000 retail customers in Minnesota.” Minn. Stat.

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<sup>1</sup> Minnesota Statute section 216H.02, subdivision 1 establishes statewide goals for greenhouse gas emissions reduction:

It is the goal of the state to reduce statewide greenhouse gas emissions across all sectors producing those emissions to a level at least 15 percent below 2005 levels by 2015, to a level at least 30 percent below 2005 levels by 2025, and to a level at least 80 percent below 2005 levels by 2050.

§ 216B.2422, subd.1(b). Dairyland meets this definition of utility and is therefore “required to file a resource plan under subdivision 2.” *See id.*, subd. 2c. The fact that Dairyland elected to follow an alternative compliance path to meeting this requirement does not change the underlying requirement.

The alternative compliance path that Dairyland elected to follow was created in 2012 when the legislature added subdivision 2b to Minn. Stat. § 216B.2422, which states that “[a] cooperative may, in lieu of filing a resource plan under subdivision 2, elect to file a report to the commission under this subdivision.” *Id.*, subd. 2b. Filing a report under subdivision 2b is an optional procedural route for complying with subdivision 2—it does not exempt Dairyland from the substantive requirement of resource planning in Minnesota.

Accordingly, Dairyland is “required to file a resource plan under subdivision 2” and therefore must comply with the requirement in the newly enacted subdivision 2c to include a narrative describing its path to making progress toward Minnesota’s greenhouse gas emissions reduction goals.

### **III. Dairyland Cooperative Must Consider The Environmental Costs Of Electricity Generation In Its Resource Plan Report.**

Dairyland argues in its filing that it is not required to consider environmental costs in its IRP report because an IRP report submitted under subdivision 2b is not part of a “proceeding” in front of the Commission. This argument fails for two reasons.

First, there is no basis in the statutory language to conclude that the legislature intended to exempt reports filed under subdivision 2b from the environmental costs requirement in subdivision 3(a). Subdivision 3(a) requires utilities to consider the environmental costs of each method of electricity generation when selecting resource options “in all proceedings before the commission, including resource plan and certificate of need proceedings.” Minn. Stat.

§ 216B.2422, subd. 3(a). As discussed above, subdivision 2b does not exempt Dairyland from the resource plan proceeding, but merely provides an alternative pathway to compliance. There is nothing about electing to proceed via this alternative procedural pathway that suggests the remaining requirements of this statutory section—i.e. considering environmental costs—no longer apply.

Second, although Dairyland points to a definition of “proceeding” found in Minnesota Rules chapter 7829 to claim that alternative resource plan proceedings under Minn. Stat. § 216B.2422, subdivision 2b were intended to be exempt from considering environmental costs, this definition is irrelevant. The definition of a proceeding relied on by Dairyland is “a formal or informal undertaking of the commission, in which it seeks to resolve a question or issue taken up on its own motion or presented to it in a complaint, petition, or notice of a proposed change in a rate, service, or term or condition of service.” Minn. R. 7829.0100, subp. 18.

Dairyland claims that an IRP report does not meet this definition because “[i]t is not something taken up by the Commission’s own motion, or presented to the Commission in a complaint or petition.” Dairyland 2014 IRP report p. 18. The problem with this assertion is that, if followed to its logical conclusion, environmental costs would not need to be considered in *any* resource plan proceeding because no IRP—whether submitted under subdivision 2 or 2b—is something “taken up by the Commission’s own motion, or presented to the Commission in a complaint or petition.” And yet the legislature specifically indicated that environmental costs must be considered in all proceedings, *including resource plan proceedings*, regardless of whether the utility elects to submit a plan under subdivision 2 or 2b.

Moreover, Minnesota Rules chapter 7829 specifically clarifies that “[t]his chapter governs practice and procedure in matters before the commission *except when a statute or a rule on a specific topic contains procedural requirements in direct conflict with this chapter*. Then,



the statute or rule on a specific topic controls insofar as it is in direct conflict with this chapter.” Minn. R. 7829.0200, subp. 2 (emphasis added). Here, there is a statute that states that submitting IRPs under section 216B.2422 is a “proceeding” during which the utility must consider environmental costs. *See* Minn. Stat. § 216B.2422, subd. 3(a). Accordingly, the resource planning statute controls and the definition of a “proceeding” in Rule 7829.0200 is irrelevant. Dairyland is not excused from considering the environmental costs of electricity generation when submitting its IRP under Minnesota Statute section 216B.2422, subdivision 2b.

**IV. The Commission Should Order Dairyland To Comply With The Substantive Provisions Of Minnesota Statutes Section 216B.2422, Subdivisions 2c And 3(a) Even If Compliance Is Not Statutorily Required.**

The statutory language discussed above supports MCEA’s position that Dairyland must include a narrative discussing its progress in reducing greenhouse gas emissions and must consider the environmental costs of electricity generation when conducting resource planning. But even if the statutory language were not clear, it is within the Commission’s authority to order Dairyland to include this type of information in its IRP report. There is certainly nothing in the statutory scheme that *prohibits* the Commission from requiring this information. The state legislature has made it very clear that it is the policy of this state to prefer and support renewable energy generation and that the purpose of this state policy is to account for the health and environmental effects of fossil fuel combustion. By ordering Dairyland to include this information, the Commission would be furthering this state policy and protecting the health of its citizens and environment.

**V. Conclusion.**

Minnesota has enacted laws that reflect our state’s policies. Specifically, if utilities serve more than 10,000 retail customers in Minnesota, they must consider and discuss progress toward Minnesota’s greenhouse gas emissions reduction goals and must consider the environmental

costs of electricity generation when selecting the resources that will serve those customers. Dairyland is subject to these laws despite its election to file an alternative form of an IRP.

MCEA appreciates the opportunity to comment on these matters and urges the Commission to require Dairyland to provide this information in reply comments in this docket.

Dated: August 5, 2014

Respectfully submitted,

/s/ Leigh Currie

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