

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

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

MPUC Docket Nos. E-015/GR-21-335,
E-015/GR-23-155
OAH Docket No. 5-2500-38008

INITIAL COMMENT

Pursuant to the Minnesota Public Utilities Commission’s (“MPUC” or “Commission”) March 6, 2025, Notice of Comment Period (“Notice”),¹ the Large Power Intervenors (“LPI”)² submit this comment (“LPI Initial Comment”) to respectfully urge the Commission to supplement its decision to exclude prepaid pension asset (“PPA”) from Minnesota Power’s rate base, without reopening the record in this proceeding, via the informal Notice and Comment process. The Commission’s determination to exclude recovery of PPA from Minnesota Power’s rate base serves to protect ratepayers from improper recovery of utility costs and should not be disturbed other than to supplement its finding with evidence existing in this docket’s record.

I. INTRODUCTION

The instant comment period stems from Minnesota Power’s 2021 general rate case, wherein Minnesota Power sought an annual increase in rate of \$108.3 million, or 17.58% above its rate revenues at the time. As part of its rate request, Minnesota Power sought recovery of prepaid pension assets. In its February 28, 2023, Findings of Fact, Conclusions, and Order (“Initial Order”), the Commission determined that, despite the Administrative Law Judge’s (“ALJ”)

¹ *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, Notice of Comment Period (March 6, 2025) (eDocket No. 20253-216140-01) (establishing an April 7, 2025, due date for initial comments).

² LPI is comprised of Blandin Paper Company; Boise White Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Cleveland-Cliffs Inc; Enbridge Energy, Limited Partnership; Gerdau Ameristeel US Inc.; Hibbing Taconite Company; Sappi Cloquet, LLC; USG Interiors, Inc.; United States Steel Corporation (Keetac and Minntac Mines); and United Taconite, LLC.

recommendation to the contrary, Minnesota Power should not be allowed recovery of the PPA and associated costs.³ Minnesota Power appealed the decision to the Minnesota Court of Appeals, which found the Commission’s decision to exclude PPA from Minnesota Power’s rate base to be unsupported by substantial evidence, reversing the decision.⁴ The instant Notice puts forth five questions to be addressed in initial comments:

1. Should the Commission reopen the record in Docket No. 21-335 on the issue of the Company’s claimed prepaid pension asset remanded to the Commission by the Court of Appeals?
2. Should the Commission request that the Department of Commerce seek authority from the Commissioner of Management and Budget to incur costs for specialized technical professional investigative services pursuant to Minn. Stat. § 216B.62, subd. 8?
3. What process should the Commission use to make its decision? Parties should comment on the applicability of *Matter of Surveillance and Integrity Review*, 996 N.W.2d 178 (Minn. 2023).
4. Should any different process be used to determine the Company’s claimed prepaid pension asset in the 2021 rate case compared to the 2023 rate case?
5. Are there any other issues to be addressed in these dockets? LPI’s Initial Comment addresses each relevant question in turn.

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II. ANALYSIS

Minnesota Statute § 216.27 states that following judicial appeals taken from a Commission order, if a Commission order is reversed, the Commission “shall proceed to determine the reasonableness of the rates, fares, charges, and classification on the merits.” The statute includes

³ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E-015/GR-21-335, Findings of Fact, Conclusions, and Order (February 28, 2023) (eDocket No. 20232-193486-01) (“Initial Order”).

⁴ *In re Application by Minn. Power for Auth. to Increase Rates for Elec. Serv. in MN*, 12 N.W.3d 477 (Minn. App. 2024) (“*Minnesota Power 2024*”).

no explicit requirement to reopen the record, nor does it mandate additional record development – it simply vests in the Commission authority to review the matter.

A. Commission Should Supplement Its Decision Rejecting Prepaid Pension Asset in Rate Base Without Reopening the Record.

LPI believes the Commission need not reopen the record in this docket regarding Minnesota Power’s attempt to earn a return on PPA in rate base. In its Initial Order, the Commission concluded that “Minnesota Power has failed to satisfy its burden to show that the prepaid pension asset is entirely funded by shareholders and not partially by market returns.”⁵ In remanding this issue to the Commission, the Court of Appeals did not hold that the Commission’s finding was incorrect, only that it did not sufficiently explain why it discounted Minnesota Power’s evidence and rejected the ALJ’s detailed findings.⁶ Therefore, the Commission should simply revise its Order to further explain why record evidence, including that provided by LPI, supports its underlying finding that the funding source for Minnesota Power’s PPA is nebulous, requiring the Commission to deny inclusion of PPA recovery through rate base.

a) Minnesota Power Cannot Earn a Return on PPA Through Rate Base Where Its PPA is Not Funded by Shareholders

Record evidence demonstrates that ambiguity exists as to the funding source of Minnesota Power’s PPA, requiring a finding that PPA should not be recovered in rate base. The Commission has recognized that utilities may only properly recover PPA in rate base where they can demonstrate shareholders funded that PPA.⁷ The Commission’s regulatory policy on when PPA should be included in a utility’s rate base distinguishes PPA funding being derived from: “(1)

⁵ Initial Order at 9.

⁶ *Minnesota Power* 2024, 12. N.W.3d at 494.

⁷ E.g., *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, PUC Docket No. E-015/GR-16-664, Findings of Fact, Conclusions, and Order at 17 (Mar. 12, 2018) (eDocket No. 20183-140963-01).

utility cash contributions; (2) collections from ratepayers; or (3) market returns on the pension trust.”⁸ LPI’s witness, Mr. Gorman, interprets the Commission’s policy to allow for inclusion of PPA in rate base “only in the event where the PPA is funded by shareholder cash contributions to the pension trust.”⁹ LPI offered testimony in this proceeding demonstrating that Minnesota Power could not show its PPA was funded solely by investor capital and that its “assessment of whether a PPA is appropriate to include in a utility’s rate base and cost of service is incomplete.”¹⁰ As explained by LPI’s witness Mr. Gorman, Minnesota Power’s assessment is deficient because it

does not acknowledge that a PPA, or portions of a PPA, can be created without a utility (or its shareholders) making “cash” contributions to the pension trust that are in excess of pension expense. Specifically, a PPA can be created and/or increased in instances where the utility makes a zero dollar cash contribution to the pension trust and the pension expense is “negative.” In this case, the cash contribution to the trust (zero) is in excess of the pension expense, and a PPA would increase by the difference of \$0 contributions and the negative pension expense. When a PPA is created without a cash contribution from the utility, there are no investor dollars being used to fund contributions to the pension trust and create a PPA. Rather, the PPA is created by returns on the pension trust that are in excess of the annual pension expense, which also creates a negative annual pension expense. In this instance, the PPA is created by excess earnings on the pension trust, and not by use of investor capital to fund pension contributions.¹¹

Further, Minnesota Power’s assessment fails to acknowledge that,

if a utility does make cash contributions to the pension trust and those cash contributions are fully recovered by the utility via collections from customers of pension expense in setting tariff rates, then the resulting PPA would not have been funded by investor capital. More specifically, the amount of pension expense recovered in rates can exceed the utility’s GAAP pension expense recorded when the rates are in effect. If those collections from customers exceed GAAP expense and are adequate to compensate the utility for its cash contribution to the pension trust, then it is very

⁸ Ex. LPI-1 at 12:17-18 (Gorman Direct).

⁹ Gorman Direct at 12:18-20.

¹⁰ *Id.* at 10:21-22, 14:8 – 16:6; Ex. LPI-2 at 5:14 (Gorman Surrebuttal).

¹¹ Gorman Direct at 10:11 – 11:12.

reasonable to conclude that the pension trust cash contributions were funded by collections from customers. Stated more specifically, if the utility has fully recovered all of its pension cash contributions to its pension trust via collections of pension expense from customers in the utility tariff rate cost of service, then the utility is not entitled to a rate of return on the PPA because the pension contributions were funded by customers, not investors.¹²

Minnesota Power's exhibits failed to show its PPA was funded by investor capital – rather, it showed pension trust returns and customers funded the PPA.¹³ On review of the evidence provided by Minnesota Power regarding creation of its PPA, Mr. Gorman concluded that “there is clear evidence that approximately 28% of the PPA was created by excess earnings on the pension trust and negative pension expense, and was not created due to cash contributions to the pension trust funded by investor capital.”¹⁴

Minnesota Power argues that because it records pension income in certain years with no plan cash contributions but still records “a PPA because the cash contribution of zero was greater than the recorded pension expense,” its PPA should be included in rate base.¹⁵ Mr. Gorman surrebuttal testimony demonstrates this reasoning is deeply flawed, stating Minnesota Power's reasoning:

fails because he simply assumes that when pension expense goes from a positive number to a negative number, that tariff rate cost recovery is automatically adjusted. As I explain below, it is not automatically adjusted. To be sure, tariff rates are only adjusted after a rate case is filed and final rates are set. If final rates are set based on a positive pension expense and the pension expense goes negative after final rates were set, customers' rates are not automatically adjusted to reflect that change in pension expense. In this instance, customers' rates provide the Company an over-recovery of actual pension expense and provide the Company

¹² *Id.* at 11:18-12:6.

¹³ *Id.* at 14:14-16.

¹⁴ *Id.* at 16:9-11.

¹⁵ Gorman Surrebuttal at 8:12-18.

supplemental cash in the form of cash pension expense recovered in rate-setting.¹⁶

Minnesota Power attempts to contort the basic tenants of rate-making to attempt to earn return on its PPA. Without demonstrable evidence that Minnesota Power's PPA is indeed funded by shareholders, it should not be permitted to recover PPA in its rate base.

b) The Precedent in Minnesota Power 2024 Does Not Necessitate Changing the Commission's Underlying Determination

Despite the findings of the Appellate Court that the Commission's decision to exclude PPA from recovery in Minnesota Power's rate base was unsupported by substantial evidence, evidence in the record demonstrates sufficient ambiguity exists as to the source of Minnesota Power's PPA funding to necessitate rejection of the PPA's inclusion in rate base. The Court of Appeals' reversal and remand in *Minnesota Power 2024* took issue with the premise of the Commission's decision, reasoning that PPA differs from other typical rate-base assets because it is "temporary and fluctuate[s] in value," and that such characteristics render PPA "materially different in character from other assets in the rate base."¹⁷ The Commission itself conceded in a subsequent appeal that *Minnesota Power 2024* invalidated some of the reasoning it applied to reject inclusion of PPA in Minnesota Power's rate base.¹⁸ However, the Appellate Court's decision regarding incorporation of Minnesota Power's PPA into rate base does not necessitate a divergence from the Commission's underlying reasoning and decision. The Commission explained in order to determine whether PPA can be properly included in rate base, it must make a threshold finding regarding how a PPA is funded (particularly, that it is funded by shareholders).¹⁹ Evidence in the record demonstrates that

¹⁶ *Id.* at 9:12-21.

¹⁷ *Minnesota Power 2024*, 12. N.W.3d at 493.

¹⁸ *In the Matter of the Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, 2025 Minn. App. Unpub. Lexis 52, 19 (Minn. App. 2025) ("Order on 21-630").

¹⁹ *Id.* at 19-20.

shareholders alone do not fund Minnesota Power's PPA, such as the testimony provided by Mr. Gorman, showing Minnesota Power failed to meet its burden to prove the extent to which its prepaid asset is shareholder-funded.²⁰ Because Minnesota Power's failure to meet its burden remains unchanged, *Minnesota Power 2024* need not disturb the Commission's decision to exclude PPA from Minnesota Power's rate base; the Commission need only provide a more thorough explanation for its decision using evidence already provided in the record. LPI believes the Commission can easily revise its underlying order as to the issue of prepaid pension asset using evidence existing in the record.

B. LPI Takes No Position at This Point Regarding the Department of Commerce's Request for Authorization to Incur Costs for Expert Services

At this time, LPI takes no position as to the question of whether the Department of Commerce should be authorized to incur costs for specialized technical professional investigative services pursuant to Minn. Stat. § 216B.62, subd. 8. LPI intends to respond to this question in Reply Comments when it better understands the Department of Commerce's position and whether a consultant would necessitate reopening the record.

C. The Commission Should Maintain Its Current Decision Process Regarding Treatment of Minnesota Power's PPA

The Commission should maintain its current decision process regarding PPA and resolve disputed issues to explain why its determination regarding PPA is proper, using evidence already existing in the record. The Commission applied the proper reasoning in this case, making a threshold determination as to the funding source of Minnesota Power's PPA to determine its suitability for recovery via rate base. While the Commission applied the proper reasoning to make

²⁰ See Order on 21-630.

that threshold determination, it failed to provide a full, reasoned explanation for its decision, and should supplement its decision with evidence in the record.²¹

If the Commission determines this issue requires further record development, it must consider the applicability of *Matter of Surveillance and Integrity Review*, which restricts the agencies' ability to remand issues to ALJs for further review and reconsideration.²² In that case, the court differentiates between an agency's ability to remand to the ALJ, which it does not allow, with the agency's ability to reopen a proceeding.²³ Furthermore, pursuant to Minnesota Statute § 216.27, the Commission has the ability to review the matter "to determine the reasonableness of the rates, fares, charges, and classification on the merits," following reversal of its order from a judicial appeal. As such, LPI believes remand of this issue to the ALJ would be improper and asserts that while the Commission has authority to reopen the record on this issue, it can support and supplement its underlying decision to reject PPA in Minnesota Power's rate base without doing so.

D. The Commission Should Maintain the Process Used to Determine Minnesota Power's Claimed Prepaid Pension Asset in the 2021 Rate Case in the 2023 Rate Case

LPI does not believe the Commission should diverge from the process used in Minnesota Power's 2021 rate case to determine the Company's claimed prepaid pension asset. In its 2021 rate case, Minnesota Power failed to meet its burden to demonstrate shareholders fund its PPA.²⁴ For that reason, it was properly excluded from rate base. The threshold analysis of a PPA's funding

²¹ Order on 21-630 did not take attack the Commission's reasoning as to the threshold determination, but stated "[a]s we recognized in *Minnesota Power 2024*, 'the evaluation of prepaid pension assets involves technical and complicated accounting issues in ratemaking proceedings.'" *Id.* Given this complexity, and in light of our decision in *Minnesota Power 2024*, we conclude that the commission has not made sufficient findings and we reverse its decision." *Id.* at 20-21.

²² *Matter of Surveillance and Integrity Review*, 996 N.W.2d 178, 183 (Minn. 2023).

²³ *Id.* at 190.

²⁴ Initial Order at 9.

source to determine appropriate recovery through rate base need not change. If Minnesota Power wants to recover PPA from rate base, it must properly demonstrate such funding comes from shareholders. Until it can appropriately demonstrate that, the Commission should continue to find recovery of PPA through Minnesota Power's rate base inappropriate and make on changes in how it determines that.

III. CONCLUSION

For the reasons provided herein above, LPI respectfully requests the Commission supplement its decision, without reopening the record in this proceeding, to further explain its decision to exclude PPA from Minnesota Power's rate base, via the informal Notice and Comment process. LPI believes maintenance of the Commission's underlying determinations to exclude recovery of PPA will protect ratepayers from improper or burdensome recovery of Minnesota Power's costs, and ultimately result in just and reasonable electric rates.

Dated: April 7, 2025

Respectfully submitted,

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