

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange
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Chair
Commissioner
Commissioner
Commissioner
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In the Matter of Minnesota Power’s 2016–2030
Integrated Resource Plan

ISSUE DATE: September 19, 2017

DOCKET NO. E-015/RP-15-690

In the Matter of Minnesota Power’s Petition for
Approval of the Energy*Forward* Resource
Package

DOCKET NO. E-015/AI-17-568

ORDER REFERRING GAS PLANT FOR
CONTESTED CASE PROCEEDINGS,
AND NOTICE AND ORDER FOR
HEARINGS

PROCEDURAL HISTORY

On July 18, 2016, the Commission issued its Order Approving Resource Plan with Modifications in Minnesota Power’s (or the Company’s) 2016–2030 resource plan.¹

On June 8, 2017, Minnesota Power filed a request for an extension to file its next resource plan to accommodate its proposal for a proposed wind, solar, and gas resource package,² and requested that the Commission refer the matter to the Office of Administrative Hearings (OAH) for a contested case.

On June 13, 2017, the Commission issued a notice of comment on procedural schedule to address the following issues:

- Should the Commission grant Minnesota Power’s extension request? Is the proposed extension of at least one year reasonable, or should the Commission consider an alternative date?
- Is Minnesota Power’s proposed process reasonable? Do the parties have sufficient information at this time regarding Minnesota Power’s Energy*Forward* Resource Package to determine whether a resource plan extension or a contested case is necessary?

¹ *In the Matter of Minnesota Power’s 2016-2030 Integrated Resource Plan*, Docket No. E-015/RP-15-690, Order Approving Resource Plan With Modifications (July 18, 2016).

² Minnesota Power referred to this suite of resources as the Energy*Forward* Resource Package and stated that it is intended to fulfill certain needs identified in its 2016 resource plan.

- Given that MP's Energy*Forward* Resource Package includes several types of resources, is it necessary to evaluate the entire package at once, or should the wind, solar, and natural gas resources be evaluated individually as part of separate proceedings?

On June 30, 2017, the Department of Commerce (the Department), Clean Energy Organizations (CEO)³ and the Large Power Intervenors (LPI)⁴ filed procedural comments in response to the notice.

Minnesota Power filed a reply to comments on July 12, 2017.

On July 28, 2017, the Company filed a petition for approval of its Energy*Forward* Resource Package. The package encompasses three energy projects: 1) a power purchase agreement (PPA) with the 250 MW Nobles Wind Project in southwestern Minnesota; 2) a PPA with the 10 MW Blanchard Solar Project in central Minnesota; and 3) affiliated interest agreements dedicating to the Company 48% of the proposed 525 MW Nemadji Trail Energy Center (NTEC) natural gas combined cycle project in Superior, Wisconsin.

The Commission issued a second notice on August 3, 2017, allowing supplemental procedural comments.

On August 16, 2017, the Department, the Large Power Intervenors (LPI), and Minnesota Power filed supplemental comments.

On September 7, 2017, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

In this order the Commission refers consideration of Minnesota Power's proposed gas plant for contested case proceedings, and takes other procedural steps to enable a full consideration of the issues raised in this proceeding. The Commission also approves Minnesota Power's request for an extension to file the Company's next resource plan.

II. The 2016 Resource Plan

The approved 2016 resource plan required the Company to idle Taconite Harbor 1 and 2, ceasing coal operations by 2020; rely on bilateral contracts to meet capacity needs through 2019; and retire Boswell Energy Center Units 1 and 2 when sufficient energy and capacity becomes available, but not later than 2022. The Commission required the Company to file its next resource plan on February 1, 2018.

³ CEO includes Fresh Energy, Minnesota Center for Environmental Advocacy, Sierra Club, and Wind on the Wires.

⁴ LPI includes ArcelorMittal USA; Blandin Paper Company; Boise Paper, a Packaging Corporation of America company (formerly known as Boise, Inc.); Enbridge Energy, Limited Partnership; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; USG Interiors, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation.

In the 2016 Order, the Commission also required, *inter alia*, the following:

- Minnesota Power may pursue a request for proposals (RFP) to investigate the possible procurement of combined-cycle natural gas generation to meet its energy and capacity needs in the absence of Boswell Units 1 and 2 and Taconite Harbor Units 1 and 2, with no presumption that any or all of the generation identified in that bidding process will be approved by the Commission (order point 7);
- By the end of 2017, Minnesota Power shall initiate a competitive bidding process to procure 100-300 MW of installed wind capacity (order point 9);
- Minnesota Power shall acquire solar units of 11 MW by 2016, 12 MW by 2020, and 10 MW by 2025 to meet its Solar Energy Standard obligations (order point 10); and
- Minnesota Power shall propose a demand-response competitive-bidding process within six months of the date of this order (order point 13).

III. Minnesota Power's Petition

In its July 28, 2017 petition, Minnesota Power described the benefits of its proposed three-resource *EnergyForward* Resource Package (*EnergyForward* package). The Company explained that with the *EnergyForward* package Minnesota Power's overall, long-term power supply will be made up of two-thirds renewables and renewable-enabling natural gas generation and purchases, and one-third coal.

Minnesota Power said that the *EnergyForward* package is designed to implement capacity additions necessary as a result of previously announced coal plant retirements and a large power demand-side management product. The Company stated that the full resource package will provide a more balanced supply portfolio with reasonable cost increases for customers.

The Company requested that the Commission refer the *EnergyForward* package to a contested case proceeding to promptly address its proposal and provided its preferred contested case schedule. On August 16, 2017, the Company filed supplemental comments including a revised proposed schedule for the contested case, relevant portions of which are set forth below:

Minnesota Power’s Proposed EnergyForward Resource Package Contested Case Schedule (Relevant Portions)

Commission Referral to Contested Case Proceeding	September 7, 2017
Initial ALJ Prehearing Conference	October 2017
Minnesota Power Direct Testimony	November 6, 2017
Deadline for Intervention	November 17, 2017
Intervenor Direct Testimony	December 29, 2017
All Parties’ Rebuttal Testimony	February 9, 2018
All Parties’ Surrebuttal Testimony	March 2, 2018
Prehearing Conference	March 16, 2018
Evidentiary Hearings	March 19 - 23, 2018
Initial Briefs	April 27, 2018
Reply Briefs/Proposed Findings of Fact	May 18, 2018
ALJ Report	June 22, 2018
Exceptions	July 12, 2018
Replies to Exceptions	July 19, 2018
Commission Agenda Meeting	September 18, 2018

Minnesota Power requested that the Commission order in this matter be issued by September 28, 2018.

The Department recommended that the Commission approve the Company’s request to extend the deadline for filing its next resource plan to October 1, 2019. The Department also recommended that the Commission evaluate each element of Minnesota Power’s proposed EnergyForward package separately and questioned whether a need existed to refer any of the components of the proposed EnergyForward package to a contested case.

CEO recommended, among other things, that the Commission deny the Company’s request for an extension of the filing date for its next resource plan and concluded that a contested case would not be reasonable or necessary. CEO also recommended that each of the components of the proposed EnergyForward package be evaluated separately. CEO also raised issues regarding Minnesota Power’s affiliated interest agreement with South Shore Energy, LLC.

LPI similarly recommended that the Commission deny the Company’s resource plan extension request, concluding that the appropriate process for evaluating specific wind, solar, and natural gas resources is in the context of a resource plan proceeding. LPI also raised issues regarding demand response for individual customers.

IV. Referral for Contested Case Proceedings

Minnesota Power requested a contested case hearing on its three proposed projects (the *EnergyForward* package). After consideration of the issues raised by the parties, and the arguments presented at the Commission hearing, the Commission will refer only the proposed gas plant resource to the Office of Administrative Hearings for contested case proceedings. The Commission has already approved the acquisition of additional wind and solar generation by Minnesota Power, and the Company shall refile its wind and solar PPAs for Commission approval in a separate docket.

The Commission finds, however, that it cannot satisfactorily resolve all issues regarding the approval of the company's proposed 48% share in the 525 MW Nemadji Trail Energy Center natural gas project on the basis of the record before it. The issue turns on specific facts that are best developed in proceedings conducted by an Administrative Law Judge (ALJ). The Commission agrees that referral of the gas plant is appropriate in order to develop a full record upon which to make a final determination on that part of the proposal.

The Commission will therefore refer the proposed gas project to the Office of Administrative Hearings for full contested case proceedings and a public hearing conducted by an ALJ. The Commission requests that the ALJ identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, and fundamental fairness.

In light of this referral and the need for time to evaluate the Company's proposals to meet its identified need, the Commission agrees that it is reasonable to extend the due date for Minnesota Power's next resource plan filing to October 1, 2019. Finally, to facilitate the review process, the Commission will require certain additional process steps as set forth in the ordering paragraphs below.

V. Issues to Be Addressed

The ultimate issue in this case is whether Minnesota Power's proposed gas plant is necessary and reasonable. This turns on numerous factors that are best developed in formal evidentiary proceedings, including but not limited to consideration of the certificate of need factors and the resource planning factors.

This referral includes the following understandings and requirements: Minnesota Power bears the burden of proving that the proposed gas plant or any portion thereof is needed and reasonable based on all relevant factors, including but not limited to the consideration of the following:

- An updated forecast of demand;
- Costs, including socioeconomic and environmental costs, which would include consideration of the most recent environmental externality values established by the Commission in Docket 14-643;

- Alternatives to some or all of the gas plant energy and capacity proposed by the Company, including but not limited to alternatives such as additional wind and solar resources (with updated costs), storage, demand response, and additional energy efficiency; and
- Consideration of compliance with the affiliated–interest statute, since ownership of the proposed gas plant is by South Shore Energy, LLC, a wholly owned subsidiary of ALLETE, Inc., the parent company of Minnesota Power.

The Commission will refer the merits of the proposed gas plant to OAH for development of the record consistent with Minn. R. 7850.0900, and request that the ALJ identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, fundamental fairness, and the parameters outlined in this order.

The parties may also raise and the ALJ may address other issues relevant to Minnesota Power’s proposed gas plant.

VI. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Jeanne Cochran. Her address and telephone number are as follows: Office of Administrative Hearing, 600 North Robert Street, St. Paul, Minnesota 55101; (651) 361-7838. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620. Her Legal Assistant is Katie Lin at 651-361-7911 Katie.lin@state.mn.us

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57–14.62; the rules of the Office of Administrative Hearings, Minn. R. 1400.5100–1400.8400; and, to the extent that they are not superseded by those rules, the Commission’s Rules of Practice and Procedure, Minn. Rules 7829.0100–7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the Office of the Revisor of Statutes’ website at www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules 1400.6700–1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Sean Stalpes, Economic Analysis, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, 651-201-2252.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

Minnesota Power and the Department are currently the only parties to this case. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. R. 1400.6200.

D. Prehearing Conference

A prehearing conference will be held on October 25, 2017, at 10:30 a.m. in the Small Hearing Room at the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Persons participating in the prehearing conference should be prepared to discuss relevant issues, time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

E. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to contested cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 539-1180, with any questions.

F. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. R. 7845.7300–7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers consideration of Minnesota Power’s proposed gas plant to the Office of Administrative Hearings for contested case proceedings to be conducted by an ALJ.
2. The Commission requests that the ALJ identify the issues and determine the appropriate scope and conduct of the hearing, considering but not limited to the issues identified herein.
3. Minnesota Power shall refile an updated petition limited to those portions relevant to consideration of the proposed gas plant, with a revised forecast and updated alternatives.

4. This referral includes the following understandings and requirements: Minnesota Power bears the burden of proving that the proposed gas plant or any portion thereof is needed and reasonable based on all relevant factors including the consideration of:
 - A. An updated forecast of demand;
 - B. Costs, including socioeconomic and environmental costs, which would include consideration of the most recent environmental externality values established by the Commission in Docket 14-643; and
 - C. Alternatives to some or all of the gas plant energy and capacity proposed by the Company, including but not limited to alternatives such as additional wind and solar resources (with updated costs), storage, demand response, and additional energy efficiency.
5. The renewable resource requirements set forth in Minn. Stat. § 216B.2422, and Minn. Stat. § 216B.243, subd. 3a will apply to consideration of Minnesota Power's proposed gas plant.
6. The scope of the contested case proceeding shall include consideration of compliance with the affiliated interest statute.
7. The Commission requests that the ALJ complete her report by July 2, 2018.
8. The Commission approves Minnesota Power's request for an extension to file the Company's next integrated resource plan on October 1, 2019.
9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of an Application of Freeborn Wind Farm, LLC for a Large Wind Energy Conversion System Site Permit for the 84 MW Freeborn Wind Farm in Freeborn County

OAH Docket Number: _____

NOTICE OF APPEARANCE

TO: Administrative Law Judge LauraSue Schlatter, 600 North Robert Street. PO Box 64620, St. Paul, MN 55164

PLEASE TAKE NOTICE that:

- 1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.
2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.
3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Party's/Agency's Attorney: _____

Firm Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Respondent's/Opposing Party's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Dated: _____

Signature of Party/Agency or Attorney