

**STATE OF MINNESOTA**

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Katie Sieben  
Dan Lipschultz  
Valerie Means  
Matthew Schuerger  
John Tuma

Chair  
Vice Chair  
Commissioner  
Commissioner  
Commissioner

**In the Matter of Basin Electric Power  
Cooperative's Optional Integrated  
Resource Plan**

**Docket No. ET6125/RP-19-425**

**BASIN ELECTRIC POWER COOPERATIVE'S OBJECTIONS TO THE  
SIERRA CLUB, FRESH ENERGY, AND THE MINNESOTA CENTER FOR  
ENVIRONMENTAL ADVOCACY'S PETITION TO INTERVENE  
AND FIRST SET OF INFORMATION REQUESTS**

**I. Introduction**

On July 16, 2019, Sierra Club, Fresh Energy, and the Minnesota Center for Environmental Advocacy ("Petitioners") filed a petition to intervene in this optional integrated resource planning ("O-IRP") matter. On that same date, they also jointly submitted Petitioners' First Set of Information Requests to Basin Electric, and filed those same requests in this docket.

Basin Electric Power Cooperative ("Basin Electric") hereby objects to Petitioners' request to intervene for three reasons. First, Petitioners cannot meet the standard for intervention set forth in Minn. R. 7829.0800, subp. 2. Second, Petitioners have not shown that their intervention as a full party in this proceeding will be helpful with respect to the issues that will come before the Minnesota Public Utilities Commission ("Commission") in this matter. Third, to the extent that Petitioners may seek to address relevant issues arising in the Commission's review of Basin Electric's annual compliance report, they can do so by filing comments.

Basin Electric also objects to the information requests submitted by Petitioners because none of Petitioners are parties to this proceeding and the Commission has previously directed only that parties may issue information requests in O-IRP dockets. *See In the Matter of Basin Elec. Power Coop.'s Optional Integrated Res. Plan Compliance Report*, Sept. 26, 2013, RP-13-562, Order Acknowledging Receipt of Compliance Report and Closing Docket.

For the reasons stated above and discussed below, Basin Electric requests the Commission deny Petitioners' request to intervene. Basin Electric also requests the Commission declare that Basin Electric has no obligation to respond to Petitioners' First Set of Information Requests because Petitioners are not parties to this proceeding. In the alternative, if the Commission grants Petitioners' request to intervene, Basin Electric hereby objects in advance to the First Set of Information Requests to the extent they seek information that is outside the scope of this proceeding.

## **II. The Commission Should Deny the Petition to Intervene.**

### **A. Petitioners Fail to Meet the Standard for Intervention.**

To prevail on their petition for intervention, Petitioners must show they satisfy one of the following conditions: (1) petitioner is a person "specifically considered by statute to be interested in the particular type of matter at issue;" (2) petitioner is "specifically declared by statute to be an interested party;" (3) "the outcome of the proceeding will bind or affect the person with respect to an interest peculiar" to them "as distinguished from an interest common to the public or other ratepayers in general;" or (4) petitioner's "interests are not adequately represented by one or more other parties participating in the case." Minn. R. 7829.0800, subp. 2. Petitioners fail to satisfy any of these requirements.

Petitioners are not persons who are specifically considered by statute (in this case, the O-IRP statute) to be interested in the particular type of matter at issue in this proceeding, or who

have been declared as interested parties under that statute, and Petitioners do not contend otherwise. *See* Minn. Stat. § 216B.2422, subd. 2b.

To support their request for full party status, Petitioners allege in non-specific terms and without any significant support that they “have an interest in the outcome of this proceeding” and that “[n]o other party can adequately represent” their organizations’ interests. Pet., p. 3. But these claims are insufficient to meet the standard for intervention. Petitioners cannot show that “the outcome of the proceeding will bind or affect” them with respect to “an interest peculiar” to them and “as distinguished from an interest common to the public or other ratepayers in general.” Minn. R. 7829.0800, subp. 2. Petitioners also cannot show that their “interests are not adequately represented by one or more other parties participating in the case” especially given the limited issues before the Commission in this docket and the participation of the Minnesota Department of Commerce in this matter. *Id.*

For these reasons alone, Petitioners’ request to intervene should be denied.

**B. Allowing Petitioners to Intervene Will Not Be Helpful In Securing the Just, Speedy, and Economical Determination of the Issues Before the Commission.**

To a large extent, Petitioners defend their request for intervention by pointing out that they regularly participate in resource planning matters before the Commission. Petitioners acknowledge, however, that Basin Electric is not required to comply with the same IRP requirements as investor-owned utilities. This last point is an important one with respect to the petition to intervene.

This proceeding is very different than the full-fledged IRP proceedings for investor-owned utilities with substantial generation facilities in Minnesota. *See* Minn. Stat. § 216B.2422. In 2012, the Minnesota Legislature passed and Governor Dayton signed into law a revision to Minnesota’s resource-planning statute. Act of Apr. 28, 2012, 2012 Minn. Laws ch. 268 (codified

at Minn. Stat. § 216B.2422, subd. 2b). That amendment created the O-IRP filing process for certain generation-and-transmission cooperatives. Until that time, some might have argued that Minnesota’s resource planning process allowed for extensive information-collection burdens on cooperatives even when those cooperatives had only minimal contacts in Minnesota. The purpose of the new O-IRP was to clearly relieve those burdens. As the Commission noted in a 2014 order, the changes enacted in subdivision 2b have the “evident goal of streamlining the compliance process for qualifying cooperatives.” *In the Matter of Basin Elec. Power Coop.’s Optional Integrated Res. Plan*, p. 4, Dec. 16, 2014, Docket No. 14-534, Commission Order Acknowledging Receipt of Compliance Report and Closing Docket.

To be eligible to file an O-IRP under the streamlined procedure, “a generating and transmission cooperative electric association [must have] at least 80 percent of its member distribution cooperatives located outside of Minnesota and [] provide[] less than four percent of the electricity annually sold at retail in the state of Minnesota.” Minn. Stat. § 216B.2422, subd. 2b. Basin Electric meets the definition of a qualifying cooperative under the O-IRP filing statute: 91% of its distribution cooperatives are located outside of Minnesota, and its power sales represented 2.6% of the electricity sold in Minnesota in 2018. 2019 O-IRP compliance report, p. 1. Accordingly, “in lieu of filing a resource plan under subdivision 2,” Basin Electric “elect[ed] to file a report to the commission under [subdivision 2b].” *Id.*

Under the O-IRP process, Basin Electric’s compliance filing simply “must include projected demand levels for the next 15 years and generation resources to meet any projected generation deficiencies.” *Id.* Minnesota Statutes § 216B.2426 requires that O-IRPs contain information about distributed-generation resources. *Id.* (“The commission shall ensure that opportunities for the installation of distributed generation . . . are considered in any proceeding

under section 216B.2422 . . .”). Very significantly for this case, Minnesota law also provides data submitted during the O-IRP process “may be aggregate data and need not be separately reported for individual distribution cooperative members of the cooperative.” Minn. Stat. § 216B.2422, subd. 2b.

Petitioners have not come to terms with the limited scope of the matters before the Commission in this case. The interests that they claim in “advancing resource choices that minimize or eliminate pollutant emissions, and advancing the transition to clean, affordable, renewable energy and energy efficiency,” Pet., p. 3, are not at issue in this case and, in fact, exceed the jurisdiction of the Commission since they concern Basin Electric’s generation resources that are not located in Minnesota. Due to their significant presence in Minnesota, cooperatives like Great River Energy (“GRE”) and Minnkota Power Cooperative (“Minnkota”) file traditional IRPs. *See* Minn. Stat. § 216B.2422, subd. 2. Although these traditional IRPs are advisory for cooperatives, GRE’s and Minnkota’s IRPs must still be much more involved than Basin Electric’s O-IRP. *See* Minn. Stat. § 216B.2422. To allow Petitioners to intervene would be inconsistent with the just, speedy, and economical determination of issues before the Commission. It would also be inconsistent with the purposes of the O-IRP process and the advisory nature of this proceeding. Moreover, such participation would likely lead to unproductive, time-consuming arguments and discovery disputes regarding issues irrelevant to this proceeding. *See* Minn. R. 7829.0200 (stating that the administrative rules governing utility proceedings, practice, and procedure “must be construed to secure the just, speedy and economical determination of issues before the commission”).

**C. Denying the Petition to Intervene Will Not Prevent Petitioners' Involvement in these Proceedings.**

The Commission's denial of the petition to intervene will still allow Petitioners to participate in this proceeding as members of the public by filing comments with the Commission. Minn. Admin. R. 7829.0900. They also may request an opportunity for oral presentations. *Id.*

**III. The Commission Should Declare Basin Electric Has No Obligation to Respond to Petitioners' First Set of Information Requests.**

In the present docket, Basin Electric filed its annual compliance report under the O-IRP process set forth in Minn. Stat. § 216B.2422, subd. 2b. In 2013, the Commission “establish[ed] . . . procedures for the orderly and efficient processing of future [O-IRP] compliance reports: . . . [providing that] *Parties* may issue information requests within the initial and reply comment periods.” *In the Matter of Basin Electric Power Cooperative's Optional Integrated Resource Plan Compliance Report*, p. 1, Sept. 26, 2013, RP-13-562, Order Acknowledging Receipt of Compliance Report and Closing Docket (emphasis added). Since Petitioners are not parties, they have no standing to issue information requests. If the Commission is inclined to grant the petition to intervene, Basin Electric requests the Commission declare that Petitioners' First Set of Information requests should be stricken to the extent they are irrelevant to the issues related to “projected demand levels” or any issue allowed in this O-IRP proceeding, pursuant to Minn. Stat. § 216B.2422, subd. 2b.

**IV. Conclusion**

For the reasons stated, Basin Electric requests the Commission deny Petitioners' request to intervene. Basin Electric also requests the Commission declare that Basin Electric has no obligation to respond to Petitioners' First Set of Information Requests because Petitioners are not parties to this proceeding. If the Commission grants Petitioners' request to intervene, Basin

Electric requests the Commission strike the First Set of Information Requests to the extent they seek information outside the scope of this proceeding.

Dated: July 26, 2019	BASIN ELECTRIC POWER COOPERATIVE  By: <u>/s/ B. Andrew Brown</u> Michael J. Ahern (Bar No. 0000668) B. Andrew Brown (Bar No. 0205357) Dorsey & Whitney LLP 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402 (612) 340-2600
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