

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

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

DOCKET NO. E-015/GR-21-335

In the Matter of the Application of Minnesota
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DOCKET NO. E-015/GR-23-155

**COMMENTS OF THE OFFICE OF
THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION**

The Office of the Attorney General—Residential Utilities Division (OAG) hereby responds to the Public Utilities Commission’s March 6, 2025 Notice of Comment Period regarding the process to use following the Minnesota Court of Appeals’ remand of the prepaid-pension-asset issue from Minnesota Power’s 2021 rate case. If the Commission elects to reopen the record, it may refer the case back to the Office of Administrative Hearings (OAH) to take further evidence. The Commission should use the same process to decide the prepaid-pension issue in both (I) the 2021 rate-case remand and (II) Minnesota Power’s 2023 rate case.

BACKGROUND

In Minnesota Power’s 2021 rate case, the Commission concluded that the utility had not justified rate-base treatment of a prepaid-pension asset.¹ Minnesota Power appealed this decision. The Court of Appeals held that a utility’s “mandatory contributions to pension plans are an ‘expense[] of a capital nature’ to which the commission must give ‘due consideration’ in

¹ Docket No. E-015/GR-21-335, Findings of Fact, Conclusions, and Order at 9 (Feb. 28, 2023).

determining the utility’s rate base.”² The Court concluded that the Commission had not adequately explained its decision to “categorically” exclude the prepaid pension asset from rate base, particularly in the face of an administrative law judge’s contrary findings.³ The Court, however, could not conclusively determine that Minnesota Power’s prepaid-pension asset must be included in rate base because “pension plans also earn market returns and ‘shareholder contributions do not solely drive prepaid pension assets.’”⁴ The Court remanded for additional findings, giving the Commission the option, but not the obligation, to reopen the record.⁵

While the 2021 rate-case appeal was pending, Minnesota Power filed another rate case (the 2023 rate case), again requesting to include a prepaid pension asset in rate base. The parties to the 2023 rate case ultimately reached a comprehensive settlement agreement,⁶ which the Commission adopted.⁷ The settlement agreement provided that if the 2021 rate-case appeal resulted in “a reversal or modification of the Commission’s 2021 Rate Case order with regard to the prepaid pension asset,” Minnesota Power would be permitted to include the prepaid pension asset “consistent with the court’s order.”⁸

ANALYSIS

I. IF THE COMMISSION REOPENS THE RECORD, IT MAY REMAND THE CASE TO OAH.

The Commission’s notice asks commenters to address the applicability of *Matter of Surveillance and Integrity Review (SIRS)*,⁹ to any further proceedings it may order. *SIRS*’s holding involved a different procedural posture than this case and is not applicable here. In *SIRS*, the

² *In re Application of Minnesota Power*, 12 N.W.3d 477, 493 (Minn. Ct. App. 2024).

³ *Id.*, 493–94.

⁴ *Id.* at 494.

⁵ *Id.*

⁶ See Docket No. E-015/GR-23-155, Settlement Agreement (May 3, 2024).

⁷ See Order Accepting and Adopting Agreement Setting Rates (Nov. 25, 2024).

⁸ Settlement Agreement at 9.

⁹ 996 N.W.2d 178 (Minn. 2023).

Minnesota Supreme Court held that the Department of Human Services could not remand a case to OAH where Human Services had failed to accept, reject, or modify the administrative law judge's recommendation.¹⁰ *SIRS* did not involve the situation here, where the Commission accepted an ALJ report with modifications, the Commission's decision was appealed, and an appellate court has remanded with instructions that the Commission may open the record.¹¹

Because *SIRS* does not apply, the Commission may, if it chooses to reopen the record, remand the case to OAH for further proceedings to supplement the contested-case hearing record. The OAG takes no position on whether the prepaid-pension issue should be reopened or whether the case should be remanded to OAH if the Commission chooses to reopen the record.

II. THE COMMISSION'S DETERMINATIONS ON REMAND SHOULD CONTROL THE 2023 RATE-CASE SETTLEMENT.

The Commission's notice asks whether "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." The OAG recommends that the outcome of whatever process the Commission uses to resolve the 2021 rate-case remand should also control the outcome of the 2023 rate case.

The settlement in the 2023 rate case provides that if the 2021 rate-case appeal results in "reversal or modification of the Commission's 2021 Rate Case order," Minnesota Power should be allowed to include the prepaid pension asset in rate base "consistent with the court's order." The appeal has resulted in reversal of the 2021 rate-case order on the prepaid-pension issue. The Court's order, however, contemplates that the Commission will make an independent decision on remand following whatever process the Commission deems necessary. The Court did not prejudge

¹⁰ See *id.* at 183, 187.

¹¹ Cf. *McNitt v. Minn. IT Servs.*, 14 N.W.3d 284, 289–90 (Minn. Ct. App. 2024), *review granted* Feb. 18, 2025 (distinguishing *SIRS* where MNIT rejected an administrative law judge's recommendation to grant summary disposition and remanded to OAH for an evidentiary hearing).

the outcome of the remand. Therefore, it would be consistent with the Court's order for the Commission to make further findings and either affirm or modify its decision after whatever process it deems necessary, and for the Commission's decision to control the outcome of the 2023 rate case.

CONCLUSION

For the foregoing reasons, the Commission should take the following actions:

1. The Commission should either:
 - a. Clarify the 2021 rate-case order without reopening the record; or
 - b. Reopen the record for additional development, including, at the Commission's option, remanding the prepaid-pension issue to OAH.
2. The outcome of whatever process the Commission uses should control resolution of the prepaid-pension issue in both the 2021 rate case and 2023 rate case.

Dated: April 7, 2025

Respectfully submitted,

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