

Staff Briefing Papers

Meeting Date June 26, 2025

Agenda Item 5**

Company Minnesota Power

Docket No. E-015/GR-21-335

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

Issues

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 on prepaid pension, and should this process differ for the 2023 rate case vs. the 2021 rate case?

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✓ Relevant Documents

Date

Findings of Fact, Conclusions of Law, and Recommendations – State Office of Administrative Hearings	September 1, 2022
Findings of Fact, Conclusions, and Order – Public Utilities Commission of Minnesota	February 28, 2023
Opinion – State of Minnesota Court of Appeals	September 9, 2024
Initial Comment – Large Power Intervenors	April 7, 2025
Notice of Comment Period – Public Utilities Commission of Minnesota	March 6, 2025

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**

Comment – Minnesota Power

Date

April 7, 2025

Comments – Department of Commerce

April 7, 2025

Comments – Office of the Attorney General

April 7, 2025

Reply Comments – Minnesota Power

April 22, 2025

Reply Brief – Large Power Intervenors

April 22, 2025

BACKGROUND

On November 1, 2021, Minnesota Power (MP or the Company) filed a general rate case seeking a \$108.3 million, or approximately 17.58 percent, annual increase in its Minnesota retail electric rates based on a rate of return on common equity capital of 10.25 percent, with an effective date of January 1, 2022.

On December 2, 2021, the Commission held a hearing, where it accepted the filing, suspended rates, extended the deadline for its final Order by 90 days to November 30, 2022, set interim rates to be effective January 1, 2022, and referred the docket to the Office of Administrative Hearings (OAH).

On September 1, 2022, Administrative Law Judge Jim Mortenson issued his Findings of Fact, Conclusions, and Recommendations, which included a recommendation to approve a return on Prepaid Pension Asset. On February 28, 2023, the Commission issued its Findings of Fact, Conclusions, and Order (Order), which disallowed rate base treatment and a return on Prepaid Pension Asset.

On March 20, 2023, Minnesota Power filed a Motion for Reconsideration and Clarification on Prepaid Pension Asset and other issues.

On May 15, 2023, the Commission denied reconsideration on this issue.

On June 14, 2023, Minnesota Power filed an appeal with the Minnesota Court of Appeals on Prepaid Pension Asset and other issues.

On September 9, 2024, the Court of Appeals reversed the Commission decision on Prepaid Pension Asset and remanded it to the Commission for further review.

On January 21, 2025, the Court of Appeals reversed and remanded to the Commission Docket E-002/GR-21-630, *Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates in the State of Minnesota*, on the same issue.

On March 6, 2025, the Commission issued a Notice of Comment asking how the Commission should procedurally handle the Court of Appeals' remand. The questions on which Comment was requested are:

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?

On April 7, 2025, Minnesota Power, the Department of Commerce (Department), the Office of the Attorney General (OAG) and the Large Power Intervenors (LPI) filed comments.

On April 22, 2025, Minnesota Power and LPI filed reply comments.

DISCUSSION

I. Background

A. Prepaid Pension Asset

The earliest PUC cases related to prepaid pension asset were two Minnesota Energy Resources Corporation (MERC) rate cases. In MERC's 2010 rate case, the OAG objected to approximately \$71,000 in prepaid pension asset recovery¹ and, in MERC's 2013 rate case, the Department objected to inclusion of prepaid pension asset in rate base a position which the ALJ and Commission both agreed with in their respective Orders.² The Commission routinely disallowed recovery of prepaid pension asset costs starting in the early to mid-2010s.³

In recent rate cases, Minnesota Power has requested for a return on prepaid pension asset. In Docket E-015/GR-16-664, MP requested recovery for prepaid pension asset and, citing primarily

¹ PUC Docket G-007,011/GR-10-977

² *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-011/GR-13-617, Commission Findings of Fact, Conclusions, and Order, pp. 22-24 (October 28, 2014)

³ Docket No. E-017/GR-15-1033, *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, FINDINGS OF FACT, CONCLUSIONS, AND ORDER, pp. 25-26 (May 1, 2017), Docket No. G-011/GR-15-736, *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, FINDINGS OF FACT, CONCLUSIONS, AND ORDER, pp. 8-11 (Oct. 31, 2016), and Docket No. G-011/GR-13-617, *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, FINDINGS OF FACT, CONCLUSIONS, AND ORDER, pp. 22-24, (October 28, 2014).

recent precedential decisions in other rate cases, the Commission denied recovery.⁴ Minnesota Power did not appeal that decision. MP also requested recovery in its withdrawn 2019 rate case.⁵

In this docket, the Department of Commerce and Large Power Intervenors (LPI) opposed recovery of return on Prepaid Pension Asset. Staff Briefing Papers⁶ summarize the record to that point. In addition to the record, as noted on page 13-14 of the Briefing Papers, the following items in the record refer to Prepaid Pension Asset:

Minnesota Power Petition for Reconsideration and Clarification at 13-24 (March 20, 2023)
Large Power Intervenors Response to MP's Petition for Reconsideration at 6-10 (March 30, 2023)

Department of Commerce Reconsideration Petition Answer at 6-9 (March 30, 2023)

Court of Appeals Order of September 9, 2024 and Related Briefs⁷

II. Comments

Minnesota Power, the Department of Commerce, the Office of the Attorney General, and Large Power Intervenors filed Initial Comments, and Minnesota Power and Large Power Intervenors filed Reply Comments. Comments will be organized by topic.

A. Referral to State Office of Administrative Hearings

All parties generally agreed that the Commission should not refer the matter to the OAH. The Office of the Attorney General and Department did distinguish this case from *Surveillance and Integrity Review*.⁸ The OAG and Department argued that, in this case, the Commission did make a timely final decision on the ALJ report, and Minnesota Power appealed that ruling. Now, as the Court of Appeals instructed, the Commission needs to make additional findings and may

⁴ FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER, Docket No. E-015/GR-16-664, *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in the State of Minnesota*, pp. 15-16.

⁵ Docket No. E-015/GR-19-442

⁶ Staff Briefing Papers (Volume I) pp. 1-15.

⁷ Court of Appeals Docket No. A23-0867/A23-0871/A23-1957, *In the Matter of the Application by Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, September 9, 2024

⁸ Note that in the 2025 legislative session a bill passed that authorizes administrative agencies to request a remand to OAH (now known as the Office of Administrative Courts). 2025 Minn. Laws ch. 39, section 21. <https://www.revisor.mn.gov/laws/2025/0/Session+Law/Chapter/39/>

reopen the record at its discretion. As a result, the Commission, if it determines that the best way to resolve either or both matter is through a contested case, may remand to the ALJ. Both the OAG and Department prefer Notice and Comment, as the most efficient approach to completing this matter.

LPI also recommended the Notice and Comment process and did not distinguish this case from *Surveillance and Integrity Review*, viewing it as preventing referral. LPI believed that as simple a process as possible is best, preferring to improve the original order to comply with the Court Order rather than to reopen the record and reconsider the decision.

MP reviewed *Surveillance and Integrity Review* and found it binding. MP, in Reply Comments, stated it was 'open' to use of Notice and Comment to resolve this issue and noted that no party recommended referral to OAH.

B. Prepaid Pension Asset

1. Should the Commission reopen the record?

The Department asked that the record be reopened because parties did not initially address prepaid pension asset issue in the manner contemplated by the Court of Appeals. The original contested case centered around whether prepaid pension asset was a capital asset for ratemaking purposes and parties did not thoroughly evaluate secondary considerations such as the size of the asset, contributions required by federal law, and possible allocation between ratepayers and shareholders.

Minnesota Power opposed reopening the record. MP argued that the record is robust, sufficient for the ALJ to prepare 12 pages of findings in favor of recovery of prepaid pension asset return. MP enumerated several internal and external witnesses, three days of evidentiary hearings, four public hearings, briefs, reply briefs, written comments, and the Commission hearing discussing the issue developing the record. MP argued that the Commission has everything it needs to implement the Court Order to reverse the 2021 Rate Case Order regarding Prepaid Pension Asset, and so it would be of little value to reopen the record.

MP also noted that the financial effect on the 2023 rate case has already been agreed by all parties, subject to the decision here, so no additional record development is needed there once the decision in the 2021 rate case has been reversed.

Large Power Intervenors also opposed reopening the record. LPI argued that the proper approach to the Court Order was to provide a more thoroughly argued Order denying recovery of Prepaid Pension Asset return, a decision which does not require additional record development.

2. Should the Department of Commerce seek authority from the Commissioner of Management and Budget to incur costs for specialized technical investigative services?

The Department requested authority to incur costs for specialized technical services in this case. The Department anticipated that the technical consultant would help with the following issues:

- How the prepaid asset should be calculated
- Determining the applicable minimum contribution requirements
- Whether Minnesota Power established its prepaid pension asset was funded through investor capital

To maintain a uniform basis for informed decision-making, the Department would also use this consultant to clarify the costs in Docket 23-155 (MP's 2023 rate case).

MP and LPI did not believe a technical expert is needed. LPI did not believe that the issues requiring a technical expert would need to be addressed in this proceeding. MP noted that the Department had the opportunity to ask for expert services, and didn't, in both this rate case and the 2023 rate case and, further, the issue has been fully litigated with a full record already. MP noted that the ALJ specifically already ruled on the issues that the Department would seek information on, stating that the ALJ specifically concluded that "the entire prepaid pension asset...resulted from investor contributions".

3. Rate Case Settlement

All parties agree that the results of this case should also be used to calculate the prepaid pension adjustment to the 2023 rate case settlement, should one be needed. MP noted that the 2023 rate case settlement allowed for the use of a regulatory asset to compensate MP, should the result be favorable to MP.

DECISION OPTIONS

1. Refer Docket 21-335 to The State Office of Administrative Hearings for a Contested Case Hearing.

Or

2. Authorize the Executive Secretary to set schedules for Comment, Reply Comment and Response Comment on the prepaid pension asset issue. (All parties)
3. Reopen the record to address whether the Company has met its burden to prove the size and source of the prepaid pension asset, contributions required by federal law, and possible allocation between ratepayers and shareholders. (Department)

Or

4. Do not reopen the record and decide the issue of prepaid pension based on the existing record and the Court of Appeals' direction. (MP, LPI)

If the Commission reopens the record (Decision Option 3), it should also consider the following:

5. Pursuant to Minn. Stat. § 216B.62, subd. 8, request that the Commissioner of the Department of Commerce seek authority from the Commissioner of Management and Budget to incur costs for specialized technical professional investigative services to assist with evaluating the prepaid pension issue. (Department)

Or

6. Do not request the Department seek authority to incur costs for specialized technical professional investigative services to assist with evaluating the prepaid pension issue. (MP, LPI)