



117 South First Street • Montevideo, MN 56265

June 5, 2025

Submitted via eDockets

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: *In the Matter of a Commission Investigation into a Fuel Life-Cycle Analysis Framework for Utility Compliance with Minnesota's Carbon-Free Standard*, Docket No. E-999/CI-24-352

Executive Secretary Seuffert:

CURE submits these initial comments to the Minnesota Public Utilities Commission (Commission) regarding the questions posed in the January Notice of Comment Period (Notice) in the above-referenced docket. This comment addresses the Commission's legal authority in this matter and some of the questions in the Notice. CURE looks forward to responding to others' comments in reply and supplemental comments.

Doing a "Fuel Life-Cycle Analysis" for "Minnesota's Carbon-Free Standard" is an oxymoron when the fuel at issue contains carbon that is emitted when it is burned. Many of the questions posed, are therefore very close to being a violation of the underlying statute, as discussed further below. CURE has participated in this proceeding for over a year, starting with the questions posed in the Commission docket *In the Matter of an Investigation into Implementing Changes to the Renewable Energy Standard and the Newly Created Carbon Free Standard under Minn. Stat. § 216B.1691*, PUC Docket Number/s: E-999/CI-23-151. This repeated rehashing of what "carbon free" means, in spite of very clear statutory language and legislative intent, is extremely burdensome on organizations that are not funded by utility profits. CURE respectfully requests that the Commission not prolong this use of resources any longer than is necessary, and instead follow the law as written and cease trying to change the statute through a notice and comment process dominated by the regulated industry and other profit-seeking entities.



I. The Commission's first question

The Notice asked:

- What actions, if any, should the Commission take regarding the issues stated on pages 5-7 of the Commission's November 7, 2024 Order in Docket No. E-999/CI-23-151:
 - Definitions of the sources of and requirements for a life-cycle analysis when interpreting the statutory definition of "carbon free" for combusted fuel generation resources without carbon capture that are considered carbon free or receiving partial credit consistent with the November 7, 2024 Order.
 - Definitions of the sources of and requirements for a fuel to qualify as sustainable and waste biomass.
 - The Partnership on Waste and Energy's recommendations regarding the scope of the instant docket.
 - Development of an accounting methodology to consider energy withdrawn from short-, medium-, and long-duration storage assets.
 - Calculating partial compliance based on the net annual generation defined as "carbon-free."
 - Calculating partial compliance for fossil fuel generation with carbon capture and sequestration/storage (CCS) by estimating the total direct carbon dioxide emissions per megawatt-hour (MWh) reduced by the CCS, and applying that percentage to the output of the generation resource employing CCS to determine its carbon-free generation.
 - Calculating partial compliance for hydrogen co-firing generation by estimating the direct and indirect emissions of the generation resource per MWh with hydrogen cofiring, compared to the carbon dioxide per MWh that would be emitted if the generator burned only natural gas.
 - Whether biomass, renewable natural gas, and solid waste should be eligible as fully or partially carbon-free generation resources based on a fuel life-cycle analysis.
 - Calculating partial compliance by generators burning waste materials based on a fuel cumulative life-cycle basis considering greenhouse gas benefits relative to alternative waste management methods.
 - The definition and calculation of net market purchases.

Half of these sub-questions are fully outside of the Commission's authority under the statute, and therefore should result in no action by the Commission. Taking action without authority is *ultra vires* and contrary to the Minnesota Administrative Procedure Act—Minnesota Statutes Chapter 14. Asking for comment on issues that are clearly not contemplated by the statute is a waste of Commission resources and does not serve the public interest. While the regulated industry would be happy if the Commission could rewrite the applicable statute, this is not legal and should not be pursued.

A. The statutory language is clear, negating most of the sub-questions posed in this docket

Minnesota Statute § 216B.1691, Subdivision (1)(b) states: “Carbon-free” means a technology that generates electricity without emitting carbon dioxide.” This definition, implemented by Minnesota Statute § 216B.1691, Subdivision 2g, is the crux of the 100 percent carbon-free electric generation by 2040 standard enacted by the Minnesota legislature in 2023 (“Carbon-Free Standard” or “CFS”).¹

Another very important part of the law, Minnesota Statute § 216B.1691, Subdivision 9 states:

Local benefits.

(a) The commission shall take all reasonable actions within the commission's statutory authority to ensure this section is implemented in a manner that maximizes net benefits to all Minnesota citizens. Reasonable actions the commission must take and benefits that must be maximized include but are not limited to:

- (1) the creation of high-quality jobs in Minnesota paying wages that support families;
- (2) recognition of the rights of workers to organize and unionize;
- (3) ensuring that workers have the necessary tools, opportunities, and economic assistance to adapt successfully during the energy transition, particularly in environmental justice areas;
- (4) ensuring that all Minnesotans share (i) the benefits of clean and renewable energy, and (ii) the opportunity to participate fully in the clean energy economy;
- (5) ensuring that statewide air emissions are reduced, particularly in environmental justice areas; and
- (6) the provision of affordable electric service to Minnesotans, particularly to low-income consumers.

(b) The commission must also implement this section in a manner that balances factors such as local ownership of or participation in energy production, development and ownership of eligible energy technology facilities by independent power producers, Minnesota utility ownership of eligible energy technology facilities, the costs of energy generation to satisfy the renewable and carbon-free standards, and the reliability of electric service to Minnesotans.

(c) When making investments to meet the requirements under this section, utilities are encouraged to locate new energy generating facilities in Minnesota communities where fossil-fuel-generating plants have been retired or are scheduled for retirement.

¹ Other parts of this section are also essential to the overall CFS, such as Subdivision 7 on compliance/enforcement, and Subdivision 4 regarding the use of credits from electric generation that does not serve Minnesota customers. The definition is nevertheless the basis upon which all these other subdivisions turn.

The difference between Subdivision (1)(b) and other parts of the statute, including Subdivision 9 for example, could not be more obvious. One part is a clearly stated standard with no Commission duty to balance different interests, while Subdivision 9 envisions an active role for the Commission in interpreting and applying the standard.²

Simply put, Subdivision (1)(b) is nondiscretionary, the Commission has no authority to ignore or rewrite this definition. To the extent that this definition appears inconvenient to regulated parties, the law already contains “off ramp” provisions where the Commission can weigh the burden of compliance against reliability and affordability.³ But those “off ramp” provisions do not give the Commission any authority to change a nondiscretionary duty to apply the law as written, they merely provide an already-approved pressure valve that the Commission may employ in the future if utilities prove unable to comply with the law.

B. Agencies have no authority to rewrite statutory language

Minnesota agencies must follow the law as written by the legislature.

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. . . . When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

Minnesota Statute §645.16.

The plain meaning and language of a statute cannot be supplanted by an agency’s desired language contravening the statute. To have it be otherwise would see the role of a democratically elected legislature diminished and would directly contravene judicial precedent set in decisions of the Supreme Court of Minnesota, appellate courts of Minnesota, and the Supreme Court of the United States.

Minnesota courts have stated that in cases concerning statutory interpretation, one must first read the statute “giving words and phrases their plain and ordinary meaning.”⁴ When there is “unambiguous language,” no deference will be given to the agency’s interpretation of that language.⁵ Determining “whether a statute’s meaning is plain,” and unambiguous, requires consideration of not just the “bare meaning of the word or phrase, but also its placement and purpose in the statutory scheme.”⁶ “A statute is only ambiguous when the language therein is

² Regardless of Section 9’s room for Commission discretion in application, it is also obviously mandatory for the Commission to follow it: “Shall’ is mandatory.” Minn. Stat § 645.44, Subd. 16.

³ See Minn. Stat. 216B.1691, Subd. 2b.

⁴ *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 744 (Minn. 2021).

⁵ *Id.*

⁶ *In re Schmalz*, 945 N.W.2d 46, 50 (Minn. 2020).

subject to more than one reasonable interpretation.”⁷ Otherwise, “plain language must be followed.”⁸ In other words, “when a statute is clear and unambiguous, [the court’s] task is limited to construing the words of the statute according to their plain and ordinary meaning.”⁹

Agencies are responsible for aligning their regulations and actions with the intention of the legislature. “An agency may adopt regulations to implement or make specific the language of a statute, but may not adopt a conflicting rule.”¹⁰ “Where an agency’s interpretation contravenes the plain language of the statute, it is not entitled to judicial deference.”¹¹ The U.S. Supreme Court states that “[w]here a statute’s language carries a plain meaning, the duty of an administrative agency is to follow its commands as written, not to supplant those commands with others it may prefer.”¹² When agencies ignore the plain language and meaning of a statute, their interpretations are given no weight in a legal proceeding. Courts will decide legal issues *de novo* based on the plain language of a statute.¹³ Ultimately, where an agency ignores the plain language of a statute, the courts do not give the agency’s interpretation any deference and reject it summarily.¹⁴

When an agency creates a regulation or rule (as the Commission ultimately plans to do here through an Order¹⁵), if the rule conflicts with the plain language of a statute the typical relief is the invalidation of the conflicting standard.¹⁶ The standards that the Commission is setting in this docket, and the associated E-999/CI-23-151, must be completed expeditiously so that they can be implemented on the timeline set by the legislature. Thus, by ignoring basic statutory language, the Commission risks both having its standards invalidated, and missing statutory deadlines by having to re-do its assessment of these issues.¹⁷

⁷ *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

⁸ *Id.*

⁹ *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 649 (Minn. 2012).

¹⁰ *J.C. Penney Co. v. Comm'r of Econ. Sec.*, 353 N.W.2d 243, 246 (Minn. Ct. App. 1984) (internal citations omitted).

¹¹ *In re in re Minn. Power*, 929 N.W.2d 1, 10 (Minn. Ct. App. 2019).

¹² *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 363 (2018).

¹³ *In re NorthMet*, 959 N.W.2d at 744.

¹⁴ See *Hall v. City of Plainview*, 954 N.W.2d 254, 271 n.13 (Minn. 2021) (“because [the statute] is unambiguous, the plain language of the statute controls and we need not defer to an agency’s interpretation” (internal citations omitted)); see also *Energy Pol’y Advocates v. Ellison*, 980 N.W.2d 146, 162 n.9 (Minn. 2022) (“Because the language [...] is clear and unambiguous, our analysis is limited to the plain language of the statute”).

¹⁵ This is consistent with Minn. Stat. § 216B.1691, Subd. 2d.

¹⁶ See *Berglund v. Comm'r of Revenue*, 877 N.W.2d 780, 785 (Minn. 2016) (stating that the statute will prevail over the conflicting administrative actions)

¹⁷ Any such delay will make it much more likely that the “off ramp” provisions in the law will be invoked by utilities, a consequence that CURE would prefer to avoid if at all possible.

C. Half of the sub-questions posed in the Notice are in direct violation of statute, three questions are valid for Commission action, and the two remaining require further analysis and likely should be rejected for any action here but potentially made into a separate docket

Again, Minnesota Statute § 216B.1691, Subdivision (1)(b) states: “Carbon-free’ means a technology that generates electricity without emitting carbon dioxide.” That is all it says.

This clear definition does not mention “net zero lifecycle analysis,” it does not mention “avoided methane” or even “methane,” and it does not ask the Commission to balance eight or more different factors, such as Subdivision 9 clearly does. Thus, many of the questions posed appear to go beyond the issue of what is covered by this clear and unambiguous definition.

i. Questions that should not be answered or acted upon

As a result of the clear statutory language, all of these questions should be removed from consideration for any Commission action:

- Definitions of the sources of and requirements for a life-cycle analysis when interpreting the statutory definition of “carbon free” for combusted fuel generation resources without carbon capture that are considered carbon free or receiving partial credit consistent with the November 7, 2024 Order.
- Definitions of the sources of and requirements for a fuel to qualify as sustainable and waste biomass.
- The Partnership on Waste and Energy’s recommendations regarding the scope of the instant docket.
-
- Whether biomass, renewable natural gas, and solid waste should be eligible as fully or partially carbon-free generation resources based on a fuel life-cycle analysis.
- Calculating partial compliance by generators burning waste materials based on a fuel cumulative life-cycle basis considering greenhouse gas benefits relative to alternative waste management methods.

All of these questions have no future under the legislative intent found in the applicable statute. At no point and in no law was the Commission tasked with redefining “carbon free” to include lifecycle analyses, or any technology that generated electricity while emitting carbon dioxide. No credible commenter will be able to prove that any of these potential sources of energy can meet the statutory definition as written. Burning biomass, biomethane (“renewable natural gas”), and solid waste for energy generation always emits carbon dioxide, often more carbon dioxide than coal on a unit-of-energy basis. Waste burning is no different from fossil fuel burning under the applicable definition—at no point did the legislature create a waste exception to the clear standard.

ii. Valid sub-questions consistent with the CFS

The only sub-questions that do not obviously violate the legal standard on their face are as follows:

- Development of an accounting methodology to consider energy withdrawn from short-, medium-, and long-duration storage assets.
- Calculating partial compliance based on the net annual generation defined as “carbon-free.”
....
- The definition and calculation of net market purchases.

The questions posed above are reasonable issues for the Commission to take comment upon.¹⁸ That is to say, accounting for net market purchases, storage of carbon-free energy, and net annual generation are all tricky issues that the Commission ought to resolve in the years between now and 2040 when they become less relevant due to the full implementation of the carbon-free standard.¹⁹ CURE looks forward to seeing other parties comments on these three valid questions and encourages the Commission to focus its efforts on these three questions in the remainder of this docket.

iii. Complex sub-questions on CCS and hydrogen

Two additional questions seem to have the potential to violate the statutory intent and language, but are closer calls than the five above that are contrary to the statutory definition on their face:

- Calculating partial compliance for fossil fuel generation with carbon capture and sequestration/storage (CCS) by estimating the total direct carbon dioxide emissions per megawatt-hour (MWh) reduced by the CCS, and applying that percentage to the output of the generation resource employing CCS to determine its carbon-free generation.
- Calculating partial compliance for hydrogen co-firing generation by estimating the direct and indirect emissions of the generation resource per MWh with hydrogen cofiring, compared to the carbon dioxide per MWh that would be emitted if the generator burned only natural gas.

These questions regarding CCS and hydrogen could very easily violate the standard (if they, for example, were used to allow for partial compliance past 2040 due to poor analysis of their carbon

¹⁸ Indeed, two of these questions seem to be directly called for by Minnesota Statute § 216B.1691, Subdivision 2d (b)(2)(ii).

¹⁹ After 2040 these partial compliance calculation issues may still remain relevant due to the use of carbon-free renewable energy credit trading, but ideally Minnesota utilities will comply with the law both to its letter and spirit and discontinue high-pollution energy generation altogether.

intensity in a “lifecycle analysis” not contemplated in the statute), but because they call for a discussion of “partial compliance” they at least leave open the possibility of a rigorous application of the standard which ultimately would deem them not “carbon free,” even for partial compliance.

CCS is a technology that CURE already covered in some detail in comments in E-999/CI-23-151—CURE incorporates all of those filings here by reference rather than repeating the many pages of argument and analysis already in the record.²⁰ Regarding CCS on fossil fuel generation: this ultimately should be considered not “carbon free” for full or partial compliance under the statute. This is because burning fossil fuels is not “a technology that generates electricity without emitting carbon dioxide”—burning fossil fuels emits carbon to generate electricity, adding pollution control or capture to a facility does not change the underlying carbon-emitting technology used for electric generation. CCS is not a technology that generates electricity, it is only pollution capture technology.²¹ By the definition’s plain language, CCS cannot change the fact that burning coal, oil, gas, garbage, woody biomass, poultry litter, or fossil-methane gas or biomethane all “generates electricity [by a technology] emitting carbon dioxide.” Thus CCS is irrelevant to the statutory definition.

Burning a mixture of hydrogen and fossil-fuel gas (or biomethane) similarly is not “a technology that generates electricity without emitting carbon dioxide”—the other fuel mixed with hydrogen emits carbon dioxide when burned, so the entire technology is ineligible under the standard because it emits carbon. To say otherwise would be to consider any fuel with less carbon “carbon free” because it contains slightly less carbon than the worst fuel. The worst fuel is likely garbage,

²⁰ For access to all fourteen of the CURE filings in that docket please see <https://www.edockets.state.mn.us/documents?doSearch=true&dockets=23-151&documentId=&onBehalfOf=cure&content=&receivedFrom=&receivedTo=>. CURE encourages the Commission to incorporate all comments from all parties on the relevant topics from that sister docket into this one, in order to assure that the record is complete.

²¹ Moreover, CCS technology appended to polluting energy technology creates an energy penalty because it requires so much electricity to run that it greatly increases a plant’s energy needs. Similarly, the compressing and pumping of supercritical CO₂ will require large amounts of electricity to get the waste product to a state with suitable geology. This energy penalty is satisfied one of two ways, either the fossil fuel plant itself is run at a higher rate to create electricity that is cannibalized by the CCS system, or the CCS system is powered by another source. Other sources are likely to be fossil-fuel generation themselves (such as the Petra Nova plant in Texas, which ran a gas plant to run CCS on a coal plant), or will be market purchases with some amount of carbon-emitting energy. The pipelines and injection facilities in Minnesota and other states will have attendant carbon footprints similar to the CCS unit at the plant. All of this additional energy use and waste is not carbon-free energy, and any energy that is obtained from renewable sources to serve CCS is a waste of a finite resource that could have been used to serve customers clean energy. Thus, the perverse waste of electricity that is needed to use CCS is another reason the Commission should opt to avoid considering CCS “carbon free” in any respect under the CFS, including partial compliance.

followed by biomass, followed by coal, but no rational person would say that fossil gas is “carbon free” because it emits less carbon than these heavily polluting fuels. Thus, hydrogen co-firing is not carbon free and the only baseline a mixed gas should be compared with is zero carbon, not methane-based fuels. Benchmarking hydrogen with “natural gas”—which emits carbon dioxide when burned for electricity generation—is arbitrary and capricious and contrary to the CFS.

Nevertheless, the Commission rightly should take hydrogen as a standalone issue seriously. CURE continues to believe, as stated in comments incorporated here by reference, that hydrogen should be analyzed in a separate docket that is not confused with all of the other technologies and political pressures found in the instant docket. How hydrogen is produced, transported, stored, and used has huge implications for environmental justice and climate change. It is not appropriate to lump all sources of hydrogen (i.e. so called “grey hydrogen,” “blue hydrogen,” “pink hydrogen,” and “green hydrogen” are all very different in regards to their environmental impacts and carbon profiles) together, nor all uses of hydrogen together, and the devil will be in the details should hydrogen ever become a viable technology for heavy industry (such as steel production or chemical manufacturing) as opposed to use as an electric storage medium (i.e. green or pink hydrogen, made with renewables and nuclear power, respectively). It seems very unlikely that hydrogen will ever be competitive for energy generation with solar, wind energy, or even the very costly nuclear power that all seem to fit the CFS.²² CURE continues to urge the Commission to view only green hydrogen (hydrogen generated from electrolysis using additional renewable energy) as an (admittedly very inefficient and potentially harmful) energy storage system and not as a normal “fuel” such as fossil fuels. Hydrogen is a worthy topic of discussion, but the Commission should not dispense with it as an afterthought among the many other topics in this docket.

It is also important to note that even if CCS and hydrogen could count towards a utility’s partial compliance with the CFS, they both raise significant environmental justice concerns that the Commission must weigh under Subdivision 9. Please see Attachment A for further information on these issues.²³

²² At the current speed of green hydrogen project development, it seems extremely unlikely that this technology will be available at scale by 2040, at the very least.

²³ Due to the high likelihood of harm to low-income communities and communities of color, these technologies should be viewed with high skepticism under the “Local Benefits” part of this law, especially under Subdivision 9(a)(4)-(6), which require that the Commission ensure all Minnesotans receive the benefits of renewable and clean energy, are protected from harmful emissions, and are afforded the savings associated with low-cost renewable energy from wind and solar. CCS and hydrogen are not renewable or clean, they will increase harmful air emissions, and they are very costly to ratepayers and taxpayers – thus both technologies fail the balancing test when viewed through an environmental justice lens. TISHMAN ENVIRONMENT AND DESIGN CENTER ET AL., ENVIRONMENTAL JUSTICE CONCERN WITH CARBON CAPTURE AND HYDROGEN CO-FIRING IN THE POWER SECTOR, 2024, <https://njeja.org/wp-content/uploads/2024/07/CCS-EJ-White-Paper.pdf>. This report is attached to this comment as Attachment A.

II. The Commission's second question

In addition to the ten sub-questions listed in the Notice, there was a final cross-cutting question:

- Are there any other issues or concerns related to this matter?

A. Great Plains Institute's comments in violation of Commission rules

It is disheartening to have to repeatedly use limited resources to answer the same question repeatedly. While the regulated utilities, waste industry, timber industry, and state agencies apparently have staff time to burn on repeatedly answering the same question, environmental advocacy organizations generally do not.

It is especially unfortunate that the Great Plains Institute (GPI)—a well-resourced²⁴ and staffed organization dedicated to promoting many of the contested technologies at issue in this docket²⁵—has filled the record with information that now will be considered by the Commission. To date, GPI has made twelve untimely comments in this docket and filed them as “other” when they are obviously comments meant to influence the Commission’s decision making.

²⁴ GPI’s 2024 Lobbyist Report to the Minnesota Campaign Finance Board shows that the organization received some amount of funding—though according to GPI’s submission apparently none for legislative, administrative, or metropolitan government unit lobbying—from several of the participants in 23-151 who will also likely be participants in this docket, including Dairyland Power, Great River Energy, Hibbing Public Utilities, Minnesota Municipal Utilities Association, Minnesota Power, Southern Minnesota Municipal Power Agency, Otter Tail Power, and Xcel Energy. To view this (and other) GIP lobbying report go to this site and view the most recent filing in the “Lobbyist reports” tab: <https://cfb.mn.gov/reports-and-data/viewers/lobbying/lobbying-organizations/5953/2025.1>.

²⁵ See, e.g., Great Plains Institute, *Industrial Innovation & Carbon Management*, <https://betterenergy.org/our-work/carbon-management/>. GPI has at least 20 staff members dedicated to working on the issue of “accelerat[ing] deployment of industrial innovation and carbon management solutions” like carbon capture, reuse, transport, and storage. See also Bioeconomy Coalition of Minnesota, *Initiatives*, <https://mnbioeconomy.org/initiatives/>. The Bioeconomy Coalition of Minnesota is facilitated by GPI and lists under its policy priorities both anaerobic digestion and “emerging forestry market opportunities.” Additionally, members of the Bioeconomy Coalition include several other commenters in this and the preceding docket (23-151) including the Partnership on Waste and Energy, Ramsey/Washington Recycling and Energy, the Minnesota Forestry Association, Great River Energy, and Hibbing Public Utilities.

GPI is clearly a participant making comments in this docket,²⁶ and to the extent that it is communicating with Commission staff about this docket these should be logged as *ex parte* communications²⁷ in accordance with the law.²⁸ All past communications between GPI and Commission staff from the commencement of this docket to its conclusion should be filed in the docket.²⁹ If Commission staff is unwilling to log the *ex parte* communications that have occurred in this docket then, at the very least, the GPI comments should be removed from the record as they are clearly meant to influence the outcome of this docket. If GPI's comments remain in the docket as "other" with no correction, they complicate all other participants' ability to know what is and what is not a comment in the docket that needs to be responded to.³⁰

GPI's attempts to skirt Commission rules represent an industry-funded thumb on the scale that is not appropriate in this, or any, Commission docket. If GPI's large staff employed to promote CCS, "renewable natural gas" production and burning, biomass burning, and other false climate solutions wishes to put their comments into the docket, they should not do so in violation of rules applicable to all other participants.

B. Lifecycle analysis is an absurd complication of "carbon free"

It is very obvious which types of energy generation do not "generate[] electricity without emitting carbon dioxide"—solar, wind, and nuclear energy all seem to fit easily within this definition. A full lifecycle analysis of nuclear would turn up carbon emissions in the mining and disposal processes, and making solar panels or wind turbines also may have lifecycle carbon emissions. Yet only a few fringe comments try to argue that these technologies aren't "carbon free" in Minnesota.³¹ Clearly

²⁶ "Participant" means a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party." Minn. R. § 7845.7000, Subp. 7.

²⁷ "Ex parte communication" means an oral or written, off-the-record communication made to or by commissioners or commission decision-making personnel, without notice to parties or participants, that is directed to the merits or outcome of an on-the-record proceeding." Minn. R. § 7845.7000, Subp. 4.

²⁸ Minn. Stat. § 2216A.037; Minn. R. Chapter 7845.

²⁹ Minn. R. 7845.7400, Subp. 2, 3. These communications should have been filed within 48 hours of their occurrence. *Id.*

³⁰ This also clearly signals that any would-be participant can violate Commission rules and Minnesota lobbying laws by filing all their documents under "other" while other participants follow these laws.

³¹ For example, the Minnesota Forest Industries comment in Docket No. 23-151 from September 20, 2024, asserted that burning woody biomass in coal plants would be less carbon intensive than wind energy due to embodied carbon in wind turbines, a baffling assertion that will likely come up again in this lifecycle analysis docket. See eDockets No. [20249-210366-01](#).

the Commission understands that the law does not require a lifecycle analysis of wind and solar; it also does not require a lifecycle analysis of anything else.

III. Conclusion

In light of the above, CURE asks that the Commission only take action on the three sub-questions that are relevant to its statutory duties.

The Commission should either order its staff to report all *ex parte* communications with GPI's staff, or delete all the early comments that GPI has filed in this docket. There is nothing in the Commission's rules that allows a commenter to avoid legal duties by selecting "other" when it files comments in eDockets, arguing otherwise is patently absurd.

Finally, the Commission should conserve its resources and stop relitigating issues that are clearly outside of its duties under the CFS—while the Commission has several ways of tailoring how it applies the CFS to a particular utility based on particular circumstances, nothing in the law allows the Commission to redefine "carbon free" to be anything other than what the legislature said. Continuing to entertain actions that are *ultra vires* and contrary to law is the definition of an arbitrary waste of agency time and resources and should be avoided if at all possible. By conserving resources on this question, the Commission will be better positioned to use its staff time on more relevant issues within its charge.

/s/ Hudson Kingston

Hudson B. Kingston
Legal Director
P.O. Box 712
Ely, MN 55731
hudson@curermn.org

/s/ Marek Chorobski

Marek A. Chorobski
Legal Intern
legalintern1@curermn.org