



## I. Statement of the Issues

Does Verso have tariff obligations and owe minimum “take or pay” payments to Minnesota Power during the term of their Electric Service Agreement?

## II. Background

**On August 2, 2021**, Minnesota Power (MP) asked the Commission to affirm that the provisions of its Electric Service Agreement (ESA) with Verso Minnesota Wisconsin, LLC (Verso) explicitly set forth Verso’s continuing obligations through the termination date.

**On August 30, 2021**, the Commission received comments from Verso, the Large Power Intervenor (LPI)<sup>1</sup>, and the Minnesota Department of Commerce (Department).

**On September 9, 2021**, MP and Verso filed reply comments.

## III. Introduction

MP seeks a Commission interpretation of the ESA regarding Verso’s obligations. The dispute between MP and Verso is, in the first instance, a legal dispute regarding Commission jurisdiction and contract law.

The contract governing the relationship between MP and Verso was formulated in three stages, each approved by the Commission, and collectively referred to as “the ESA”:

1. an amended and restated ESA between MP and Stora Enso (then operator of the mill), was approved by the Commission on March 7, 2006, in Docket 05-1989 and is referred to as the “2005 ESA” (see MP’s Exhibit B),
2. an amendment to the ESA between MP and New Page (successor to Stora Enso), was approved by the Commission on December 10, 2012 in Docket 12-1025 and is referred to as the “2012 ESA” (see MP’s Exhibit C), and
3. a further amendment to the ESA between MP and Verso (acquiring New Page), was approved by the Commission on February 12, 2019 in Docket 18-603 and is referred to as the “2018 ESA” (see MP’s Exhibit D).

The arguments of the parties are varied, but five focal points are:

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<sup>1</sup> “LPI is an *ad hoc* consortium of industrial customers of Minnesota Power comprised of Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Cleveland-Cliffs Minorca Mine Inc.; Enbridge Energy Limited Partnership; Gerdau Ameristeel US Inc.; Hibbing Taconite Company; Northern Foundry, LLC; Sappi Cloquet, LLC; USG Interiors, Inc; United States Steel Corporation (Keetac and Minntac Mines); and United Taconite, LLC.” See LPI Comments, p. 1.

- (1) Verso's January 29, 2021, notice to MP terminating the ESA as of the fourth anniversary of the notice,<sup>2</sup>
- (2) Verso's March 25, 2021, letter to MP seeking to rescind its termination and to assign the ESA to ST Paper (the new buyer),<sup>3</sup>
- (3) the Commission's order approving the 2012 ESA,
- (4) a term in the 2005 ESA, Paragraph 4(C):

**C. Successors and Assigns.** This Agreement shall be binding upon the respective parties, their successors and assigns, on and after the effective date hereof; provided, however, that neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party, which consent shall not unreasonably be withheld.<sup>4</sup>

And (5), a term approved in the 2012 ESA, Paragraph 3(N):

**N. Decreases in Service Requirement for Permanent Facility Shutdown** - In the event of a permanent cessation of operations at the Customer's Duluth Paper Mill and Duluth Recycled Pulp Mill, Customer may notify the Company in writing at least two years in advance that Customer is invoking its right to reduce the Minimum Firm Demand to 0 kW which reduction shall become effective on the second anniversary of such notice. In no event shall the provision of this Paragraph be effective prior to two years after the date of such notification. Customer's rescission or modification of such notice shall be permitted only at the sole discretion of the Company.<sup>5</sup>

MP has stated that "Verso continued making its weekly payments pursuant to the ESA for contract obligations through May 13, 2021. Verso has made no further payments pursuant to the ESA."<sup>6</sup>

## IV. Parties' Comments

### A. Petition of Minnesota Power

On August 2, 2021, Minnesota Power (MP) asked the Commission to "affirm that the provisions of the ESA explicitly set forth Verso's continuing obligations, which remain in full force and effect through the termination date [January 29, 2023] regardless of whether MP enters into an ESA with a wholly separate customer located in the facility Verso idled and eventually sold."<sup>7</sup>

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<sup>2</sup> MP Petition, Exhibit E.

<sup>3</sup> MP Petition, Exhibit F.

<sup>4</sup> MP Petition, Exhibit B, p. 17.

<sup>5</sup> MP Petition, Exhibit C, pp. 2-3.

<sup>6</sup> MP Petition, p.16.

<sup>7</sup> MP Petition, Cover Letter, p. 1.

MP asks the Commission to resolve the issue prior to its planned November 1, 2021 general rate case filing, and in consideration of the potential acquisition of Verso's parent company by another entity (ST Paper), which could complicate efforts to recover amounts due.

MP "is not asking the Commission to make factual determinations regarding the amount that Verso owes Minnesota Power or to enforce the ESA."<sup>8</sup> Rather, MP believes ...

... the Commission's interpretation of the ESA is needed because it would have future ratemaking impacts due to lost revenues and it would provide clarity regarding whether large power "take or pay" agreements include an implicit duty to mitigate to reduce the minimum payments agreed upon in the ESA and approved by the Commission.<sup>9</sup>

MP states that Verso believes MP "is under an obligation to forego take or pay revenues due to its negotiation of a new ESA with a new industrial customer, even though it is a different entity and does not provide close to the same level of revenue during the take or pay period."<sup>10</sup>

MP states further that ESA take-or-pay provisions reduce uncertainty for MP allowing it to build out capacity and to manage fixed costs, allowing those fixed costs to be repaid over time. Loss of take-or-pay revenues shifts costs to other customers and reduces the franchise fees and taxes collected by local governments. MP projects that the uncollected franchise fees for the City of Duluth amount to hundreds of thousands of dollars.<sup>11</sup>

With respect to jurisdiction MP states:

The Commission has jurisdiction to interpret the ESA as a part of the Company's tariffs under the filed rate and primary jurisdiction doctrines, in that the legislature has vested in the Commission extensive on-going authority to determine and set reasonable rates, tolls, tariffs, and charges, including contracts related to rates and services, in addition to having primary jurisdiction under its ratemaking and regulatory authority to utilize its particular expertise in constructing its tariffs.<sup>12</sup>

MP draws attention to several points:

- In a letter dated January 29, 2021, Verso notified MP that Verso was terminating the ESA effective as of the fourth anniversary of the notice (Exhibit E).
- In a letter of March 25, 2021, Verso asked MP to rescind the termination and assign the ESA to ST Paper (Exhibit F).

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<sup>8</sup> MP Petition, Cover Letter, pp. 1-2.

<sup>9</sup> MP Petition, Cover Letter, p. 2.

<sup>10</sup> MP Petition, p. 6.

<sup>11</sup> MP Petition, pp. 7-8.

<sup>12</sup> MP Petition, pp. 8-9. Here MP refers to *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 42-52 (Minn. 2009) and *Siewart v. N. States Power Co.*, 793 N.W.2d 272, 277-86 (Minn. 2011).

- On May 6, 2021, MP and ST Paper entered a confidential term sheet for electric service to the Duluth Mills<sup>13</sup>
- On or about May 13, 2021, Verso closed its sale to ST Paper.<sup>14</sup>
- Verso ceased payments to MP after May 13, 2021.<sup>15</sup>

MP explains ...

Upon information and belief, Verso decided to attempt to assign the ESA to ST Paper so ST Paper would assume the take or pay obligations. But Verso chose to terminate the ESA first, meaning there was nothing to assign to ST Paper. Additionally, ST Paper never indicated any interest in taking assignment of the ESA even if Minnesota Power consented to Verso's rescission of its notice to terminate and reduce demand. Therefore, ST Paper is taking service on a wholly new contract that does not change Verso's take or pay obligations under the existing ESA.<sup>16</sup>

## B. Comments of Verso

Verso states that the Commission "should decline MP's usurious request" and states that MP "asks the Commission for a ruling that it has no duty to mitigate its damages under the ESA, even though such a ruling would allow Minnesota Power to unfairly double-recover from two customers, Verso, which used to own the Duluth Mills, and ST Paper, which now owns and operates those mills."<sup>17</sup>

Verso also states that it does not concede that the Commission has jurisdiction over this dispute. However, it states, "because the Commission does have jurisdiction over MP ... Verso is hoping that the Commission will weigh in here and order MP to mitigate its damages, so that the parties can avoid future litigation regarding this matter."<sup>18</sup>

Verso believes that MP has a clear duty to mitigate damages under the ESA. Verso references Paragraph 3(N) of the ESA (as does MP, as discussed above). Verso argues that, in approving that language the "*Commission concluded that 'the two-year advance notice is a sufficient time period to allow MP to take any necessary steps to mitigate the impact of losing significant load on its system.'"*<sup>19</sup> As such, Verso believes the Commission has already answered MP's petition in Verso's favor.

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<sup>13</sup> MP Petition, p. 18.

<sup>14</sup> MP Petition, p. 18.

<sup>15</sup> MP Petition, p. 16.

<sup>16</sup> MP Petition, pp. 17-18.

<sup>17</sup> Verso Comments, p.1.

<sup>18</sup> Verso Comments, p. 1, footnote 1.

<sup>19</sup> Verso Comments, p. 5, (footnote omitted) referring to the Commissions Amendment Order of December 10, 2012, in Docket 12-1025, p. 5, emphasis in Verso Comments.

Verso states that it continued to make payments to MP until it sold the Duluth Mills to ST Paper, and MP and ST Paper entered a new ESA, thus mitigating its damages. Verso claims that MP refused to consent to the assignment of the ESA to ST Paper and that now MP seeks to double recover.<sup>20</sup>

Verso further argues that the ESA should not be construed as a take-or-pay contract in light of the Commission's 2012 order approving the amendment. MP has a duty to mitigate damages.<sup>21</sup>

Verso also argues that a take-or-pay contract is unenforceable here. "Verso does not have two equivalent modes of performance under the ESA. It does not own the Duluth Mills anymore; it cannot elect to either take the power or pay Minnesota Power. Verso must simply pay "a lot of money for nothing in return," rendering the payment obligation an unenforceable penalty."<sup>22</sup>

### C. Comments of the Large Power Intervenors

LPI believes that Commission does not have the authority to grant MP's request. LPI "requests that the Commission dismiss the Petition with prejudice to permit Minnesota Power to pursue its breach of contract claims in state district court," or in the alternative, should the Commission determine it has jurisdiction, "LPI requests that the Commission dismiss the Petition without prejudice, deferring the action to a formal ratemaking proceeding, where stakeholders will have the time and opportunity to fully understand the implications of Minnesota Power's requested relief."<sup>23</sup>

With respect to Commission jurisdiction, LPI argues:

- The petition must be construed under the Declaratory Judgement Act (DJA)<sup>24</sup> which establishes that the courts of record, not the Commission, have the authority to declare rights under a contract. MP's petition asks the Commission to rule on a question of contract construction and to obtain a declaration of rights. The Commission cannot award MP such relief.<sup>25</sup>
- MP's claims that the Commission has authority are out of place. The Minnesota Supreme Court has ruled that the filed rate doctrine does not prevent a court from review of the terms of an agency approved tariff.<sup>26</sup>
- MP's request for relief is a de facto request for damages, which the Commission cannot award.<sup>27</sup>

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<sup>20</sup> Verso Comments, pp. 4-8.

<sup>21</sup> Verso Comments, pp. 8-10.

<sup>22</sup> Verso Comments, p. 11, footnote omitted.

<sup>23</sup> LPI Comments, p. 2.

<sup>24</sup> Minn. Stat. Ch. 555.

<sup>25</sup> LPI Comments, pp. 2-4.

<sup>26</sup> LPI Comments, pp. 4-8.

<sup>27</sup> LPI Comments, pp. 8-9.

In the alternative, LPI states, if the Commission believes that it has jurisdiction, it should deny MP's request. LPI argues that a decision in this docket could lead MP to seek cost recovery from other ratepayers. Any such effort should be referred to a formal rate case proceeding to allow interested parties to intervene.<sup>28</sup>

LPI believes that MP's statement that it may seek cost recovery from other customers is a re-litigation of the Commission's recent decision denying MP deferred accounting of lost revenues from the idling of Keetac and Verso (Docket 20-814, Order 5/13/21). There the Commission determined that the proper course of action was to pursue its concerns in a formal rate case.<sup>29</sup>

#### **D. Comments of the Department of Commerce**

The Department supports with MP's petition, stating "it is clear that Verso was obligated to pay its minimum take or pay amounts for two years after Verso's January 29, 2021 Notice of Termination Letter, or through January 29, 2023."<sup>30</sup> The Department stated that "in approving the 2005 ESA, 2012 Amendment, and 2018 Amendment, the Commission has agreed with the Department's analysis that the ESA benefits MP's ratepayers by contributing to MP's fixed costs that lowers the amount that would otherwise be collected from other ratepayers."<sup>31</sup>

The Department's analysis in its initial comments is organized into five sections:

- MP's specific request for relief (pp. 3-4),
- Commission jurisdiction (pp. 5-7),
- review of the ESAs and notice of termination (pp. 7-9),
- legal review of take-or-pay vs general contract law (pp. 9-11), and
- MP's new ESA with ST Paper (pp. 11-12).

The Department "agrees with MP that the Commission does have jurisdiction over both the ESA and whether take or pay obligations are reduced by the addition of a new utility customer."<sup>32</sup> The Department notes that Minnesota Statutes §§ 216B.05 and 216B.09 provide support for the Commission's jurisdiction over the ESA:<sup>33</sup>

The Department reviewed the applicable ESAs from 2005, 2012 and 2018 drawing attention to the language of Paragraph 3(N) approved in 2012 and to Verso's termination letter of January 29, 2021. The Department stated that it examined the contract and did not find any specific mitigation language, and that to protect customers remaining on MP's system "MP is always required to mitigate harm ... especially when large power customers leave its system,"<sup>34</sup> and by

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<sup>28</sup> LPI Comments, pp. 9-11.

<sup>29</sup> LPI Comments, pp. 9-11.

<sup>30</sup> Department Comments, p. 12.

<sup>31</sup> Department Comments, p. 10.

<sup>32</sup> Department Comments, p. 7.

<sup>33</sup> Department Comments, p.6.

<sup>34</sup> Department Comments, p. 9.

“entering into an ESA with ST Paper, MP appears to have mitigated the potential impact on other ratepayers by ensuring revenue stability to maintain affordable rates.”<sup>35</sup> The Department further states “that in light of Verso’s January 29, 2021 Notice of Termination Letter, it appears clear that the Verso’s ESA was terminated and therefore Verso was unable to reassign their ESA to ST Paper in March 2021. Additionally, the contract language in paragraph 3(N) as cited by MP appears clear that rescission shall be permitted only at the sole discretion of MP.”<sup>36</sup>

The Department refers to the comments it filed in the 2012 ESA amendment docket. There the Department stated:

To recognize the economic environment of the paper industry, Paragraph 3.N would allow for the possibility of a complete shutdown of NewPage’s Duluth Paper Mill and Duluth Recycled Pulp Mill. Upon at least two years advance notice, in a case of a permanent cessation of operations NewPage would have the right to reduce its Minimum Firm Demand to 0 kW.

Paragraph 3.N simply states that if NewPage anticipates a permanent shutdown of its Duluth operation, then upon two-year advanced notice, at the end of such two-year period NewPage would terminate its electric service from MP. The Department concludes that the two-year advance notice is a sufficient time period to allow MP to take any necessary steps to mitigate the impact of losing significant load on its system.<sup>37</sup>

The Department states that if “the Commission does not agree with the Department’s recommendation, then the Department recommends the Commission find that the ESA requires Verso to pay the difference between its minimum Contract Demand charges and the revenues from the new ST paper customers ESA.”<sup>38</sup>

## **E. MP Reply to Verso**

MP argues that the Commission, in its order approving the 2102 ESA, has not ordered MP to mitigate damages for the benefit of Verso.<sup>39</sup> MP holds that Verso misconstrues the Department’s comments attached to the Commission’s order, and in reference to Paragraph 3(N).

A plain reading of the 2012 Order and the associated filings in that docket demonstrate that the Department was concerned with the 2012 Amendment providing Minnesota Power a reasonable opportunity to mitigate against the loss of Verso’s load for the protection of all of the Company’s other customers, and not

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<sup>35</sup> Department Comments, p. 11.

<sup>36</sup> Department Comments, p. 13.

<sup>37</sup> Department Comments, p. 9, citing its comments in 12-1025, p. 5.

<sup>38</sup> Department Comments, p. 13.

<sup>39</sup> MP Reply, pp. 2-6.



with establishing a contractual duty that Minnesota Power mitigate damages for the benefit of Verso. Thus, Verso attempts to conflate the Department's purpose of providing an opportunity to mitigate for the benefit of all other customers with a duty to mitigate to reduce amounts owed by Verso.<sup>40</sup>

MP also argues that Verso misrepresents the Commission's order. Contrary to Verso's statements the Commission adopted the Department's recommendations while making no specific findings regarding the benefits of the ESA.<sup>41</sup>

With respect to Verso's argument that MP seeks double recovery, MP responds first that it is not asking the Commission to resolve factual disputes.<sup>42</sup> Should the Commission consider the issue of double recovery, MP states that it is not double recovering, that (i) Verso has a contractual obligation regardless of whether the Duluth Mills have been sold, (ii) that MP has a duty to protect its other customers from a customer that does not honor its ESA, and (iii) MP has not executed an ESA with ST Paper ...

... but has only executed (1) a standard form ESA for Large Light and Power service under Rate Schedule 75 to serve the limited energy usage while ST Paper is working on the conversion of the Duluth Mills to manufacture recycled tissue paper, and (2) a confidential term sheet with ST Paper related to the intent of the parties to enter into an ESA for Large Power Service that would be effective if and when ST Paper completes its conversion of the Duluth Mills and restarts the operation to produce recycled tissue paper.<sup>43</sup>

And, further, MP states that ST Paper is not likely to be fully operational until early 2023, will be taking only minimal power until then, and going forward from then ST Paper's demand will not come close to covering what Verso owes MP.

In responding to Verso's claim that MP was not acting in good faith, MP states that it could not assign Verso's ESA to ST Paper because Verso had terminated the ESA. Further, MP argues ...

ST Paper never indicated to Minnesota Power that it wanted to assume Verso's ESA. To the contrary, ST Paper indicated to the Company that its operations would be far less energy intensive than Verso's, so it would need to enter into an ESA with significantly lower "take" terms than Verso's ESA. Additionally, ST Paper especially did not want to make the minimum Contract Demand payments under the "pay" provision of Verso's ESA while it used relatively small amounts of energy during the reconfiguration of the Duluth Mills over a planned two-year period.<sup>44</sup>

MP further states ...

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<sup>40</sup> MP Reply, p. 3.

<sup>41</sup> MP Reply, p. 5.

<sup>42</sup> MP Reply, pp. 6-8.

<sup>43</sup> MP Reply, p. 7.

<sup>44</sup> MP Reply, pp. 9-10.

... Minnesota Power reasonably concluded that ST Paper was not seeking to assume the ESA, but rather that Verso wanted to rescind its notice in an effort to force assignment of the ESA as a condition of the sale in order to avoid its remaining minimum payment obligations. In that context, Minnesota Power's actions likely encouraged the ultimate sale of the Duluth Mills as ST Paper may not have been willing to purchase the facility if assumption of the ESA was required.<sup>45</sup>

MP argues that requiring payment from Verso under the ESA would not amount to an unenforceable penalty. "Verso first asserts that the ESA "take or pay" agreement is not enforceable because it does not offer "two viable performance options (take or pay)." But that is exactly what the ESA provides."<sup>46</sup>

#### **F. MP Reply to the Large Power Intervenors**

MP states that it is not seeking relief under the Declaratory Judgement Act (DJA) and the DJA does not establish the courts as the sole venue for interpreting contracts. The Commission has the authority to interpret tariffs and is the "preferred venue when interpretation would require the construction of technical terms and the exercise of administrative discretion."<sup>47</sup> Further, as "the Verso ESA is part of Minnesota Power's rates, the filed rate doctrine prohibits courts from evaluating the reasonableness of the approved tariff."<sup>48</sup> Further, "obtaining the Commission's determination regarding the meaning of the terms of the ESA will provide the clarity needed if either Minnesota Power or Verso elects to seek judicial enforcement of the ESA following the outcome of this proceeding."<sup>49</sup>

MP states that it is not seeking damages, and that "the act of establishing or interpreting rates alone does not come close to constituting the award of damages."<sup>50</sup>

MP argues that "[n]othing about the rate case proceeding would make it a more appropriate avenue for contract interpretation, especially since none of the parties to the contract have asserted that additional record development is needed."<sup>51</sup>

#### **G. Verso Reply to MP and the Department**

Verso states that "it would benefit the Commission and Minnesota Power's ratepayers to re-affirm its prior order on the 2012 Amendment and confirm that Minnesota Power must mitigate it (sic) damages under Paragraph 3.N of the ESA."<sup>52</sup> In its order approving the 2012

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<sup>45</sup> MP Reply, p. 10.

<sup>46</sup> MP Reply, p. 11.

<sup>47</sup> MP Reply, p. 13, footnote omitted.

<sup>48</sup> MP Reply, p. 14.

<sup>49</sup> MP Reply, P. 15.

<sup>50</sup> MP Reply, p. 16.

<sup>51</sup> MP Reply, p. 16.

<sup>52</sup> Verso Reply, p. 10.

ESA the Commission adopted the Department's language concluding "the two-year advance notice is a sufficient time period to allow Minnesota Power *to take any necessary steps to mitigate the impact of losing significant load on its system.*"<sup>53</sup> By entering a new ESA with ST Paper MP mitigated its damages and now seeks to double recover.<sup>54</sup>

Referring to the Department's comments Verso states that MP is not a "lost volume seller."<sup>55</sup>

To accept DOC's analogy, the Commission must affirmatively make 1) a legal ruling that electricity sales are subject to the UCC [Uniform Commercial Code] ... 2) a declaratory ruling that Verso is in breach of contract, which, according to the Large Power Intervenors, is likely outside the Commission's authority; 3) a factual finding that UCC remedies are inadequate to make Minnesota Power whole ... ; and 4) a factual finding that Minnesota Power is a "lost volume seller" under the UCC (MWs produced by Minnesota Power cannot be stored and do not sit in a warehouse waiting for the next buyer). No party in the proceeding has requested these flawed rulings and findings, which would far exceed the Commission's statutory authority.<sup>56</sup>

Verso reiterates that MP has mitigated its damages by entering a new ESA with ST Paper and, further, that only a court can calculate damages.

Verso argues that in a prior dispute between Northern States Power and a customer, Schlumbergersema, the Commission declined to weigh in on the dispute. Verso believes the Commission could follow the same path here.<sup>57</sup>

## V. Staff Analysis

MP asks the Commission to "interpret the ESA to require Verso to fulfill its bargained-for take or pay obligations, and clarify that Minnesota Power does not have a duty to mitigate damages under the ESA."<sup>58</sup> MP has clarified that it "has requested only an interpretation of the terms of the ESA, and explicitly acknowledged that it does not seek a determination of damages or enforcement of the ESA."<sup>59</sup> Resolution of MP's question could (1) affect MP's general rate case filing expected in November, and (2) could affect any remaining dispute that MP and Verso may pursue in other legal venues.

Staff believes the crux of the debate is whether MP tariffs and the related ESA create an obligation for Verso to pay for the minimum service obligations established in the ESA .

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<sup>53</sup> Verso Reply, p.3, quoting the Commission's order, emphasis in Verso Reply.

<sup>54</sup> Verso Reply, pp. 3-4.

<sup>55</sup> Verso Reply, pp. 4-8.

<sup>56</sup> Verso Reply, pp. 4-5, footnotes omitted.

<sup>57</sup> Verso Reply, p. 10.

<sup>58</sup> MP Reply, p. 17.

<sup>59</sup> MP Reply, p. 2.

There is much that is not known about the details of this dispute. For example, the record does not indicate the amount of revenue that MP would have collected from Verso if Verso had continued payments until January of 2023. Further, the Commission has no knowledge of an ESA that MP and ST Paper may enter, although it appears that ST Paper is currently taking service from MP pursuant to Rate Schedule 75 (Large Light and Power) to serve the limited energy usage while ST Paper is working on the conversion of the Duluth Mills.<sup>60</sup> That said, MP's request does not appear to hinge on that information. Rather, MP seeks the Commission's interpretation of the tariff/ESA language.

LPI has argued that if the Commission believes it has jurisdiction over the matter it should "dismiss the Petition without prejudice, deferring the action to a formal ratemaking proceeding, where stakeholders will have the time and opportunity to fully understand the implications of Minnesota Power's requested relief."<sup>61</sup> Staff believes the central issue is less about relief than about the Commission's intent in approving the tariff/ESA.

## VI. Decision Options

1. Dismiss MP's petition. (LPI)

OR

2. Dismiss the petition and refer the question of whether MP must credit Verso any revenues received for electricity sales to the former Verso facility against Verso's financial obligation under Section 3(N) of the ESA to MP's next rate case, expected to be filed about November 1, 2021. (*LPI alternative if Commission finds it has jurisdiction*).

OR

3. Find that the Commission has jurisdiction to interpret the tariffed Section 3(N) of the ESA. (*MP, Department*)

AND

4. Find that the tariffed Section 3(N) of the ESA requires Verso to continue payments for a period of two years from the January 29, 2021 notice of invoking Section 3(N) regardless of MP's electricity sales to a new customer at the former Verso facility. (*MP, Department*)

OR

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<sup>60</sup> MP Reply, p. 4.

<sup>61</sup> LPI Comments, p. 2.

5. Find that the tariffed Section 3(N) of the ESA requires MP to credit Verso any revenues MP receives for electricity sales to the former Verso facility against Verso's financial obligation under Section 3(N) of the ESA. (*Verso; Dept. alternative if Commission disagrees that Verso must pay for 2 years*)