

January 20, 2026

Sasha Bergman
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: Comments of the Minnesota Department of Commerce
Docket No. E015/AI-17-568

Dear Ms. Bergman,

Attached are the comments of the Minnesota Department of Commerce (Department) in the following matter:

*In the Matter of Minnesota Power's Petition for Approval of the
EnergyForward Resource Package.*

The Letter was filed by Minnesota Power on December 19, 2025.

The Department recommends the Minnesota Public Utilities Commission **rescind the approval of the three NTEC Affiliated Interest Agreements and the Guaranty Agreement** and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ Dr. SYDNIE LIEB
Assistant Commissioner of Regulatory Analysis

SR/ar
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce

Docket No. E015/AI-17-568

I. INTRODUCTION

The Nemadji Trail Energy Center (NTEC) is a proposed natural gas combined-cycle power plant to be sited in Superior, Wisconsin. NTEC is being developed by Minnesota Power's (MP or the Company) affiliate South Shore Energy, LLC (South Shore) and Dairyland Power Cooperative (Dairyland). As proposed, NTEC would consist of one gas turbine generator, a heat-recovery steam generator, and a steam turbine generator, with a total generating capacity of 525–550 MW, dependent on final turbine selection. MP cannot have an ownership interest in NTEC because Wisconsin statutes only permit residents of that state to obtain a license, permit, or franchise to own or operate a generation facility there. MP's parent company, ALLETE, Inc., created South Shore to own MP's share of NTEC.¹

The NTEC transaction involves two agreements between South Shore and Dairyland, three proposed affiliated-interest agreements (AIA) between South Shore and MP, and an agreement between MP and Dairyland. The two agreements between South Shore and Dairyland are the *Development and Construction (D&C) Agreement* and the *Ownership and Operating (O&O) Agreement*. These two agreements establish a 50/50 partnership between South Shore and Dairyland and place South Shore in the role of project and plant manager.

The three AIAs are the *Assignment of Rights Agreement (Construction Agent)* under which South Shore assigns to MP the right to act as the Construction Agent for NTEC, the *Assignment of Rights Agreement (Operating Agent)* under which South Shore assigns to Minnesota Power the right to act as the Operating Agent for NTEC, and the *Capacity Dedication Agreement (CDA)* by which South Shore would dedicate a share of NTEC's capacity and energy to MP in exchange for monthly payments from the Company. Finally, under the *Guaranty Agreement*, Minnesota Power guarantees to Dairyland the performance of South Shore's obligations under the D&C and O&O Agreements.²

Of relevance here is that the AIA agreements must be approved by the Minnesota Public Utilities Commission (Commission) under Minnesota's affiliated-interest statute (Minn. Stat. § 216B.48), the Guaranty Agreement must be approved by the Commission under Minnesota's securities statute (Minn. Stat. § 216B.49), and the entire transaction must be approved under Minnesota's property acquisition statute (Minn. Stat. § 216B.50).³

¹ *In the Matter of Minnesota Power's Petition for Approval of the EnergyForward Resource Package, Order Approving Affiliated-interest Agreements with Conditions*, January 24, 2019, Docket No. E015/AI-17-568, (eDockets) [20191-149543-01](#), at 9-10 (hereinafter "Order").

² Order at 10.

³ Order at 26-28.

II. PROCEDURAL BACKGROUND

- | | |
|-------------------|--|
| January 24, 2019 | The Commission issued its <i>Order Approving Affiliated-Interest Agreements with Conditions</i> . ⁴ The Order approved the three AIAs, the Guaranty Agreement, and the entire transaction. |
| December 19, 2025 | MP filed a letter stating “Minnesota Power communicates that it has terminated its Capacity Dedication Agreement with South Shore Energy and will no longer be an off-taker of the NTEC project.” ⁵ |
| January 6, 2026 | The Commission issued a Notice requesting comments regarding whether the Commission should rescind approval or take any other action regarding the previously approved NTEC agreements. ⁶ |

Under the Notice the following topics are open for comment:

- Considering Minnesota Power’s December 19, 2025 letter in this docket, should the Commission rescind approval or take any other action regarding the previously approved NTEC AIAs?
- Are there other issues or concerns related to this matter?

III. DEPARTMENT ANALYSIS

A. APPLICABLE STATUTES

The AIA agreements must be approved by the Commission under Minnesota’s affiliated-interest statute (Minn. Stat. § 216B.48) which states in part “[t]he commission shall approve the contract or arrangement made or entered into after that date [August 1, 1993] only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest.”⁷

The Guaranty Agreement must be approved by the Commission under Minnesota’s securities statute (Minn. Stat. § 216B.49) which states in part:

For the purpose of this section, "security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; assumption of any obligation or liability as a guarantor, endorser, surety, or otherwise in the security of another person;
[...]

⁴ Order.

⁵ *In the Matter of Minnesota Power’s Petition for Approval of the EnergyForward Resource Package*, Minnesota Power, Letter, December 19, 2025, Docket No. E015/AI-17-568, (eDockets) [202512-226058-01](#), (hereinafter “Letter”).

⁶ *In the Matter of Minnesota Power’s Petition for Approval of the EnergyForward Resource Package, Notice of Comment Period*, January 6, 2026, Docket No. E015/AI-17-568, (eDockets) [20261-226545-01](#), (hereinafter “Notice”).

⁷ [Minn. Stat. § 216B.48, subd. 3](#) (1993).

If the commission shall find that the proposed security issuance is reasonable and proper and in the public interest and will not be detrimental to the interests of the consumers and patrons affected thereby, the commission shall by written order grant its permission for the proposed public financing.⁸

The entire transaction must be approved under Minnesota’s property acquisition statute (Minn. Stat. § 216B.50) which states in part:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$1,000,000, [...] without first being authorized so to do by the commission. ... If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing.⁹

All three statutes contain a public interest decision criterion.

B. DEPARTMENT ANALYSIS

B.1. Affiliated Interest Agreements

The *Assignment of Rights Agreement (Construction Agent)* made MP the Construction Agent for NTEC:

According to the Petition, the Construction Agent has primary responsibility and authority to manage the planning, permitting, design, construction, acquisition and procurement, completion, startup, and commissioning of NTEC
[...]

By acting as Construction Agent for the NTEC facility, Minnesota Power will have significant control to ensure that construction of the project proceeds on schedule and within budget to the fullest extent possible ... The Company argued that the Assignment of Rights Agreement (Construction Agent) is in the public interest because it provides protections for Minnesota Power as Construction Agent; benefits Minnesota Power customers by ensuring an experienced construction manager; and provides the Commission with regulatory oversight.¹⁰

⁸ [Minn. Stat. § 216B.49](#) (2011).

⁹ [Minn. Stat. § 216B.50, subd. 1](#) (2023).

¹⁰ *In the Matter of Minnesota Power’s Petition for Approval of the EnergyForward Resource Package*, Court of Administrative Hearings, ALJ Report, July 2, 2018, Docket No. E015/AI-17-568, (eDockets) [20187-144475-01](#), at findings 470 and 471 (hereinafter “ALJ Report”).

The *Assignment of Rights Agreement (Operating Agent)* made MP the Operating Agent for NTEC:

According to the Petition, the Operating Agent:
[H]as primary responsibility for the operation and maintenance of NTEC; the planning, permitting, design, construction, acquisition and procurement, and completion of any capital improvements; the scheduling, dispatch, sale, or other disposition of energy and ancillary services; decommissioning of NTEC; and any other matters set forth in the project agreements or otherwise determined by the Management Committee.

[...]

By acting as Operating Agent for the NTEC facility, Minnesota Power will have significant control to ensure that operation of the NTEC plant is in accordance with prudent utility practice ... Minnesota Power argued that the *Assignment of Rights Agreement (Operating Agent)* is in the public interest because it provides protections for Minnesota Power as Operating Agent; benefits Minnesota Power customers by ensuring an experienced operator for the NTEC facility; and provides the Commission with regulatory oversight.¹¹

The CDA sets up payments by MP to South Shore as if MP were the owner of NTEC:

The Company maintained that, overall, the CDA is structured to effectively mimic utility ownership of a rate-based generation asset. Additionally, the CDA provides that Minnesota Power is giving the Commission authority over the contract and relationship on the same basis as if Minnesota Power owned the NTEC plant in its own name as a rate-based asset.¹²

First, the *Assignment of Rights Agreement (Construction Agent)* was justified as being in the public interest based upon providing protections for MP and MP's customers by ensuring an experienced construction manager for NTEC. Since MP has changed the NTEC project and no longer plans to take energy and capacity from NTEC, there is no evidence that the *Assignment of Rights Agreement (Construction Agent)* is in the public interest at this time. In fact, MP maintaining its status as construction agent exposes MP's ratepayers to potential risks with no offsetting energy and capacity benefits. The Department recommends the Commission rescind approval of the *Assignment of Rights Agreement (Construction Agent)*.

Second, the *Assignment of Rights Agreement (Operating Agent)* was justified as being in the public interest based upon providing protections for MP and MP's customers by ensuring an experienced operator for the NTEC. Since MP has changed the NTEC project and longer plans to take energy and

¹¹ ALJ Report at findings 475 and 476.

¹² ALJ Report at finding 488.

capacity from NTEC, there is no evidence that the *Assignment of Rights Agreement (Operating Agent)* is in the public interest at this time. In fact, MP maintaining its status as operating agent again exposes MP's ratepayers to potential risks with no offsetting energy and capacity benefits. The Department recommends the Commission rescind approval of the *Assignment of Rights Agreement (Operating Agent)*.

Third, MP itself has terminated the CDA. Thus, it is reasonable for the Commission to rescind approval of the CDA. The Department recommends the Commission rescind approval of the CDA.

B.2. Security Agreement

In addition to the three NTEC AIAs discussed above there is a Guaranty Agreement between MP and Dairyland. Under the Guaranty Agreement, MP guarantees to Dairyland the performance of South Shore's obligations under the Development and Construction (D&C) Agreement and the Ownership and Operating (O&O) Agreement.¹³ Since MP has changed the NTEC project and no longer plans to take energy and capacity from NTEC, there is no evidence that the Guaranty Agreement is in the public interest at this time. In fact, MP maintaining its status as guarantor of South Shore again exposes MP's ratepayers to potential risks with no offsetting energy and capacity benefits. The Department recommends the Commission rescind approval of the Guaranty Agreement.

IV. DEPARTMENT RECOMMENDATIONS

Based on analysis of the information in the record, the Department has prepared recommendations, which are provided below. The recommendations correspond to the subheadings of Section III above.

B. DEPARTMENT ANALYSIS

- B.1. The Department recommends the Commission rescind approval of the *Assignment of Rights Agreement (Construction Agent)*.
- B.1. The Department recommends the Commission rescind approval of the *Assignment of Rights Agreement (Operating Agent)*.
- B.1. The Department recommends the Commission rescind approval of the CDA.
- B.2. The Department recommends the Commission rescind approval of the Guaranty Agreement.

¹³ Order at 27. The D&C and O&O Agreements establish a 50/50 partnership between South Shore Energy and Dairyland and place South Shore Energy in the role of project and plant manager.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Comments

Docket No. E015/AI-17-568

Dated this **20th** day of **January 2026**

/s/Sharon Ferguson

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11	Generic	Commerce Attorneys	commerce.attorneys@ag.state.mn.us		Office of the Attorney General - Department of Commerce	445 Minnesota Street Suite 1400 St. Paul MN, 55101 United States	Electronic Service		Yes	17-568PUC Official
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