

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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St. Paul, MN 55101-2147

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

PUC Docket No. E015/GR-19-442

**LPI INITIAL COMMENT**

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The following companies – an ad hoc association of large industrial customers of Minnesota Power known as Large Power Intervenors (“LPI”) – consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Enbridge Energy; Hibbing Taconite Company; Sappi Cloquet, LLC; USG Interiors, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation submit this comment in response to the Minnesota Public Utilities Commission’s (the “Commission”) Notice of Comment Period on Completeness and Procedures dated November 5, 2019, regarding Minnesota Power’s Application for Authority to Increase Rates for Electric Utility Service in Minnesota (“Application”).<sup>1</sup>

**I. INTRODUCTION**

LPI submits this comment to address two issues concerning the Application. First, LPI respectfully recommends that this docket be referred to the Office of Administrative Hearings for a contested case.<sup>2</sup> Second, LPI seeks clarification from Minnesota Power<sup>3</sup> on its Large Market Wholesale Contract adjustment related to Basin Electric Power Cooperative, as it is unclear whether the adjustment is appropriate and consistent with the 2009 Rate Case.<sup>4</sup>

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<sup>1</sup> Notice of Comment Period (Nov. 5, 2019) (eDocket No. 201911-157264-01) (the “Initial Notice”). In addition to feedback regarding the adequacy of the Application, the Initial Notice requests comments on whether the Application should be referred to the Office of Administrative Hearings, and, if so, the scope of the Office of Administrative Hearing’s review.

<sup>2</sup> LPI takes no position on the completeness of the Application, as it is still reviewing the voluminous documents.

<sup>3</sup> LPI notes that the Initial Notice provides opportunity for reply comments by November 18, 2019.

<sup>4</sup> In the Application, Minnesota Power cites the 2009 Rate Case Order and Direct Testimony of Nancy Campbell in support of its adjustment. *See In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota*, Docket No. E015/GR-09-1151, Findings of Fact, Conclusions of Law,

## II. ANALYSIS

### A. **The Commission Should Refer the Application to the Office of Administrative Hearings**

LPI believes that the Application should be referred to the Office of Administrative Hearings for contested case proceedings addressing all standard rate case issues (e.g., cost of equity, capital structure, overall revenue requirement, revenue allocation, and rate design). Minnesota Power is requesting an increase of approximately \$65.9 million or 10.59%<sup>5</sup> along with a transmission rider<sup>6</sup> and other proposals that would significantly impact ratepayers. There are numerous material issues of fact allegedly supporting the Application, which can only be addressed in a contested case setting.

In addition to the standard rate case issues identified above, and during the contested case process, LPI also requests the Commission to direct the parties to develop the record on the appropriate level of interest for any interim-rate refunds due to customers at the time final rates take effect.<sup>7</sup> In another rate case, the settling parties agreed, and the Administrative Law Judge and Commission approved, an interim-rate refund interest rate that was above the prime rate.<sup>8</sup> Given what will likely be an extended time period for reviewing the Application, LPI respectfully requests this issue be thoroughly reviewed. Members of LPI and other ratepayers often pay substantial increases during the interim-rate period, increases that typically exceed the Commission's final revenue deficiency determination. The appropriate interest rate for any interim-rate refund is therefore an important consideration that should have record development.

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and Order at 6 (Nov. 2, 2010) (“2009 Rate Case Order”); *see also In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota*, Docket No. E015/GR-09-1151, Direct Testimony of Nancy A. Campbell (Mar. 31, 2010) (“Campbell Testimony”) (in this comment, MPUC Docket No. E015/GR-09-1151 shall be referred to as the “2009 Rate Case”).

<sup>5</sup> Initial Filing – Vol. 1 Notice of Change of Rates Interim Petition at Summary of Filing (Nov. 1, 2019) (eDocket No 201911-157149-06) (the “Interim Rates Petition”).

<sup>6</sup> Minnesota Power's Transmission Cost Recovery Rider Petition is ongoing in MPUC Docket No. E015/M-19-440.

<sup>7</sup> Minn. Stat. § 216B.16, subd. 3(c) instructs the Commission “to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission” in the event that interim rates are in excess of final rates.

<sup>8</sup> *See In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket No. E002/GR-15-826, Findings of Fact, Conclusions, and Order at 29 (June 12, 2017).

Based on recent rate case results and current market trends, LPI respectfully submits that the applicable interest rate under Minn. R. 7825.3300 does not provide adequate compensation to ratepayers. In Minnesota Power’s last rate case, interim rates were in effect for nearly two years.<sup>9</sup> Additionally, final rates in the case<sup>10</sup> were approximately 30% of the previously reduced interim rates.<sup>11</sup> The Commission is well aware of the competitive pressures LPI members face on a regular basis.<sup>12</sup> Therefore, LPI respectfully requests that the Office of Administrative Hearings and, in turn, the Commission carefully consider the appropriate interest rate for an interim-rate refund to ensure ratepayers are reasonably compensated for committing valuable resources to overstated electric bills for a significant amount of time.

## **B. LPI Seeks Clarification on Minnesota Power’s Wholesale Market Contract Adjustments**

In the Interim Rates Petition, Minnesota Power notes the following regarding its Large Market Wholesale adjustment:

Minnesota Power’s 10-year, 100 MW asset-based power market sales contract with Basin Electric Power Cooperative (the “Large Market Contract” or “LMC”) ends April 30, 2020. The LMC took effect on May 1, 2010, which was midway through the 2010 calendar test year in Minnesota Power’s 2009 rate case (Docket No. E015/GR-09-1151) (“2009 Rate Case”). During the course of the 2009 Rate Case, *the Commission adjusted Minnesota Power’s 2010 test year to reflect 12 full months of asset-based wholesale margins*

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<sup>9</sup> See *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E015/GR-16-664, Order Setting Interim Rates (Dec. 30, 2016); *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E015/GR-16-664, Notice Approving Notice of Final Electric Rates (Nov. 29, 2018) (noting that final rates become effective on December 1, 2018).

<sup>10</sup> *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E015/GR-16-664, Compliance Filing – Final General Rates at Sch. 6 (June 28, 2018). Schedule 6 states the Final Increase (After Reconsideration) is \$11,980,515.

<sup>11</sup> *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E015/GR-16-664, Order Authorizing Interim-Rate Reduction (Apr. 13, 2017).

<sup>12</sup> For example, recent announcements show industry continues facing challenging economic conditions. See, e.g., Dee DePass, *More than 30 nonunion workers will lose jobs at U.S. Steel Iron Range operations*, Star Tribune, Nov. 11, 2019, <http://m.startribune.com/more-than-30-non-union-workers-will-lose-jobs-at-u-s-steel-iron-range-operations/564758902/>; Jimmy Lovrien, *ArcelorMittal to shut down Indiana blast furnace*, Duluth News Tribune, Nov. 11, 2019, <https://www.duluthnewstribune.com/business/energy-and-mining/4765453-ArcelorMittal-to-shut-down-Indiana-blast-furnace>.

*from the LMC, although Minnesota Power only received eight months of LMC revenues in that test year.*

The LMC will now expire during the 2020 test year (April 30, 2020). As a result of the adjustment made in Minnesota Power's 2009 Rate Case, *customers will have received the full benefit of ten years of LMC asset-based wholesale margins by December 31, 2019.* As such, the Company's proposed 2020 test year reflects removal of four months of margins from both final and interim rates.<sup>[13]</sup>

LPI respectfully questions the accuracy of the above language in the Interim Rates Petition, especially related to the Commission's adjustment of asset-based wholesale margins from the LMC. Minnesota Power contends that customers benefitted from a full ten years of asset-based wholesale margins by December 31, 2019; however, this appears to mischaracterize testimony from the Department of Commerce – Division of Energy Resources (the "Department"), as well as the final resolution of Minnesota Power's 2009 Rate Case. In addition, the proposed adjustment does not appear to comply with Minnesota law.

It appears, according to Department witness Nancy Campbell, that the adjustment made in the 2009 Rate Case was not an exclusion of the revenue: it was an offsetting calculation.<sup>14</sup> In testimony, Ms. Campbell notes that Minnesota Power had two contracts to sell energy/capacity to Great River Energy that expired on April 30, 2010, but Minnesota Power had two new contracts: one contract to sell energy/capacity to Basin Electric Power Cooperative beginning on May 1, 2010 ("BEPC Contract"), and another contract to sell energy/capacity to Otter Tail Power Company.<sup>15</sup> Based on what appear to be offsetting timeframes for these contracts, Ms. Campbell recommended that "the Commission *exclude* the revenues and fuel expenses or wholesale margin for the expiring [Great River Energy] contracts and *replace* it with the revenues and fuel expenses or wholesale margin of the [Basin Electric Power Cooperative] and [Otter Tail Power Company] wholesale contracts."<sup>16</sup>

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<sup>13</sup> Interim Rates Petition at Sec. B.3 (emphasis added).

<sup>14</sup> See Campbell Testimony at 36-52.

<sup>15</sup> *Id.* at 45.

<sup>16</sup> *Id.* at 47 (emphasis added).

Furthermore, this issue appears to have been resolved in settlement, not Commission direction as Minnesota Power implies. As evidenced by the 2009 Rate Case Order, that matter was resolved through a large settlement agreement between Minnesota Power and several parties.<sup>17</sup> The 2009 Rate Case Order notes that the “Stipulation and Settlement includes in test-year revenues \$37,700,000 in wholesale margins.”<sup>18</sup> Importantly, the total number does not specify the adjustments that were made. It is therefore unclear whether, or the extent to which, any of the revenues from Minnesota Power’s wholesale contracts were accounted for in a manner that harmed Minnesota Power. And Minnesota Power’s requested LMC adjustment for interim rates fails to set forth, with reasonable specificity and broader explanation of the record set forth above, why the LMC adjustment is appropriate now. LPI believes that the resolution reached in Minnesota Power’s 2009 Rate Case accounted for wholesale revenues by netting out mid-year contract expirations with new contracts coming online, and that it would be improper for the Commission to now allow Minnesota Power to adjust interim rates to permit retention of an additional four months of revenue from the BEPC Contract. In short, LPI does not agree that there is any lost revenue from the BEPC Contract that Minnesota Power needs to recoup via the LMC adjustment to interim rates. LPI therefore respectfully requests Minnesota Power submit, in its reply comment, additional justification for its request.

LPI is also concerned that Minnesota Power’s proposed LMC adjustment for purposes of setting interim rates would not comply with Minnesota law. For example, if Minnesota Power disagreed with the resolution of test-year wholesale sales revenue resulting from Minnesota Power’s 2009 Rate Case, the time for lodging an objection was the applicable period for a petition for reconsideration of the Commission’s order in the 2009 Rate Case, which has long since passed. Furthermore, LPI questions whether Minnesota Power’s LMC adjustment comports with Minn. Stat. § 216B.16, subd. 3(b), requiring that interim rates “shall be calculated using . . . rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the utility’s *most recent* rate proceeding.”<sup>19</sup> In its Interim Rates Petition, Minnesota Power only references the 2009 Rate Case Order, omitting a citation to the extensive record from

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<sup>17</sup> See 2009 Rate Case Order.

<sup>18</sup> *Id.* at 15.

<sup>19</sup> Emphasis added.

its 2016 rate case. LPI submits that Minnesota Power's reliance on information from its 2009 Rate Case requires additional explanation as to how its Interim Rates Petition comports with Minn. Stat. § 216B.16, subd. 3.

Based on the foregoing concerns regarding the record in Minnesota Power's 2009 Rate Case and applicable law, LPI respectfully submits that it is unreasonable to assume for the purpose of setting interim rates that the revenue associated with the BEPC Contract will cease on January 1, 2020, when Minnesota Power will in fact continue to collect revenues under the agreement until April 30, 2020. LPI therefore requests Minnesota Power include, in its reply comment, a revised interim rate calculation that assumes Minnesota Power will receive the four months of sales revenue from the BEPC Contract.

### **III. CONCLUSION**

LPI appreciates the opportunity to comment on the Application. LPI firmly believes that a contested case proceeding is the appropriate forum to examine the factual assertions within the Application, and LPI looks forward to continuing thoughtful examination of those issues in a contested case setting. LPI also respectfully requests that Minnesota Power provide the following information in its reply comment for parties and the Commission to review:

- Detailed factual and record explanation for allowing the proposed LMC adjustment, including but not limited to the timing and interaction of wholesale contracts ending and beginning during the test year in Minnesota Power's 2009 Rate Case;
- Detailed legal justification addressing how the proposed LMC adjustment complies with Minnesota law governing interim rates; and
- A revised interim rate calculation excluding the proposed LMC adjustment.

Dated: November 12, 2019

Respectfully submitted,

STOEL RIVES LLP

*/s/ Andrew P. Moratzka*

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