

November 13, 2019

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/M-18-250

Dear Mr. Wolf:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

Minnesota Power's 2018 Safety, Reliability and Service Quality Standards Report.

The Report was filed on April 2, 2018 by:

Jenna Warmuth
Senior Public Policy Advisor
Minnesota Power
30 West Superior Street
Duluth, Minnesota 55802-2093

The Department recommends that the Minnesota Public Utilities Commission (Commission) direct Minnesota Power to propose tariff amendments that would require Minnesota Power to offer payment plans to disconnected customers during non-Cold Weather Rule months, unless that customer has a history of repeatedly breaking payment plans or repeatedly being disconnected for nonpayment. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ DANIELLE WINNER
Rates Analyst

DW/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E015/M-18-250

I. INTRODUCTION

On January 14, 2019, Minnesota Power (MP or the Company), the Office of the Attorney General-Residential Utilities Division, and the Energy CENTS Coalition filed with the Minnesota Public Utilities Commission (Commission or PUC) a scope of work for an assessment of MP's payment agreement, disconnection, reconnection, and Cold Weather Rule service practices (Scope of Work) in Docket No. E015/M-18-250. The parties agreed to engage Winthrop & Weinstine, P.A. as an independent third party to conduct the review.

On October 18, 2019, Winthrop & Weinstine (W&W or the Firm) filed its "Regulatory Compliance Assessment- Report" (Report). The Commission subsequently issued a "Notice of Comment Period on Minnesota Power's Regulatory Compliance Report" on October 22, 2019, asking parties to respond to the following questions:

1. Does the report raise concerns of Minnesota Power's disconnection, reconnection, data collection, and/or other practices?
2. Are there other matters the Commission should consider when reviewing this report and future service quality reporting?

These Comments respond to the Commission's request for comments.

II. DEPARTMENT ANALYSIS

1. *Does the report raise concerns of Minnesota Power's disconnection, reconnection, data collection, and/or other practices?*

Winthrop & Weinstine's Report does not appear to identify concerns regarding these matters. While W&W did identify concerns related to MP's data reporting to the Commission, the Firm appears confident that these concerns have been adequately addressed. On page 67 of the Report, W&W concludes:

This Assessment did not identify any current or on-going systemic compliance concerns regarding MP's credit and collections, disconnection or reconnection efforts. The Assessment verified failures to file accurate information with the Commission in 2015 and 2016 and failures to file

timely information with the Commission in 2017. MP has taken concrete steps to avoid such failures in the future.

However, W&W did note that there is a lack of clarity concerning the interpretation of Minnesota Statutes § 216B.098, subdivision 3, which states:

A utility shall offer a payment agreement for the payment of arrears. Payment agreements must consider a customer's financial circumstances and any extenuating circumstances of the household. No additional service deposit may be charged as a consideration to continue service to a customer who has entered and is reasonably on time under an accepted payment agreement.

Specifically, the Firm notes that the Commission may want to make a legal determination as to whether the Statute requires Minnesota utilities to offer payment plans to disconnected customers.

On page 26 of its Report, the Firm states:

The Commission will need to determine whether MP's Summer [Payment Agreement] process complies with Minn. Stat. § 216B.098, subd. 3. If the Commission determines that it does not comply, the Commission must also approve a change to MP's tariffs as the Company's practice with respect to disconnected customers complies with its current Commission-approved tariff.

On page 67 of its Report, W&W concludes:

The Assessment also notes the legal question for the Commission to address regarding the interpretation of Minnesota Statutes § 216B.098, subdivision 3, concerning payment agreement requirements, which, depending on the Commission's resolution, may require amendment of the Company's currently-approved tariffs.

The Department notes, therefore, that the Report appears to identify this interpretation as the sole remaining issue to be addressed by the Commission.

- 2. Are there other matters the Commission should consider when reviewing this report and future service quality reporting?*

On pages 9-11 of its September 10, 2018 Response Comments, the Department offered the following analysis concerning the interpretation of Minnesota Statutes § 216B.098, subdivision 3.

To this point, Company and the Consumer Advocates disagree on the interpretation of Minn. Stat. 216B.098 (subd. 3), which states:

A utility shall offer a payment agreement for the payment of arrears. Payment agreements must consider a customer's financial circumstances and any extenuating circumstances of the household. No additional service deposit may be charged as a consideration to continue service to a customer who has entered and is reasonably on time under an accepted payment agreement.

Upon reviewing the statute, the Department observes that careful reading of the statute indicates that requiring payment in full prior to reconnection does not necessarily violate this statute. For example, if a customer is in arrears, MP must offer a payment agreement that considers the "customer's financial circumstances and any extenuating circumstances of the household." If such a customer enters into a payment agreement and is later disconnected during non-CWR [Cold Weather Rule] months due to not being "reasonably on time under an accepted payment agreement," the statute doesn't prohibit MP from requiring payment in full prior to reconnection during non-CWR months. Thus, Minn. Stat. 216B.098 is vague enough that reasonable parties may interpret it differently as to its application during non-CWR months.³ In contrast, the CWR statute (Minn. Stat. 216B.096) is not vague on this front, as it requires utilities to offer payment plans to disconnected customers during the CWR months. The Department discusses the CWR below.

Even though it appears that MP has not violated Minn. Stat. 216B.098 during non-CWR months, the Department is sympathetic to the Consumer Advocates' arguments, not due to statutory reasons, but instead due to reasons of public policy. If MP's practice is to ask disconnected low-income customers to pay for their balance in full prior to being reconnected, rather than, say, enter into a new payment plan, such a policy seems to emphasize punishment over resolution, particularly if customers did not previously enter into payment plans (for whatever reason), or if customers have been reasonably on time in payments in the past. As Minnesota Power has recognized, "The disconnection of a customer's service is the Company's most costly course of action and therefore, disconnection is the Company's last resort in remedying past due payments."⁴

Minn. Stat. 216B.098 does not require customers to enter into a payment plan, and thus customers may either choose not to do so or not be fully cognizant about their options, despite the notices, due to numerous circumstances. If for any reason a customer has not entered into a payment plan prior to being disconnected, they should be able to re-establish service by entering into a payment plan after they have been disconnected. If it's okay that one day a customer may enter into a payment plan, and the next day may not because they've been disconnected, *even though they may owe the same amount on each day*, there must be a meaningful difference between those customers to warrant the disparity in treatment.

If that is in fact the Company's practice, MP appears to be offering the justification that the disconnected customer has had multiple instances to enter into a payment arrangement and has not pursued them. However, the Department would argue that being disconnected may provide the necessary motivation for the customer to finally enter into a payment arrangement or even enter into a new payment agreement. Therefore, if a disconnected customer is willing to enter into a payment agreement, there is no meaningful difference between the connected and disconnected customers. Further, being disconnected is already a significant punishment for failing to enter into a payment plan; requiring balance paid in full on top of disconnection not only adds a second layer of punishment but doesn't seem practical. For certain types of disconnected customers- such as those willing to enter into payment agreements, or those for whom disconnection is a first time occurrence- jumping two steps up in punishment seems excessively harsh.

Thus, the Department concludes that the Company has not offered a meaningful distinction between connected and disconnected customers that justifies why one but not the other should be permitted to enter into a payment plan. Further, the Department concludes that Minnesota Power's policy of requiring balance paid in full prior to reconnection is overly punitive especially towards first-time disconnections and towards customers who become motivated to enter into a payment plan once disconnected.

Therefore, the Department recommends that the Commission direct the Company to offer payment plans to all disconnected customers during non-CWR months, unless that customer has a history of repeatedly

breaking payment plans or repeatedly being disconnected for nonpayment.

³ It may even be that Minn. Stat. 216B.098 (subd. 3) was written in an intentionally vague manner so as to give utilities and the Commission flexibility in the statute's application. It appears that to date, since Minnesota Power has worked with the Commission's CAO on the issue of full payment prior to reconnection, the Commission has operated under the de facto assumption that the statute does not necessarily require a payment plan to be offered to disconnected customers.

⁴ MP's November 4, 2015 Supplemental Comments, Docket No. E015/M-15-323, page 2.

The Department continues to support this analysis, conclusion, and recommendation. Therefore, the Department concludes that while requiring disconnected customers to pay their balance in full prior to reconnection does not necessarily violate Minnesota Statutes § 216B.098, subdivision 3, doing so for all customers may be overly punitive from a public policy perspective.

III. CONCLUSION AND RECOMMENDATIONS

Winthrop & Weinstine's Report appears to reflect that there are no concerns about Minnesota Power's disconnection, reconnection, data collection, and reporting processes. However, the Firm notes that the Commission may wish to resolve the interpretation of Minnesota Statutes § 216B.098, subdivision 3.

To this point, the Department continues to support its analysis provided in its September 10, 2018 Response Comments. Therefore, the Department recommends that the Commission direct Minnesota Power to propose tariff amendments that would require Minnesota Power to offer payment plans to disconnected customers during non-Cold Weather Rule months, unless that customer has a history of repeatedly breaking payment plans or repeatedly being disconnected for nonpayment.

/ja

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/M-18-250

Dated this **13th** day of **November 2019**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-250_M-18-250
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_18-250_M-18-250
Lori	Hoyum	lhoyum@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_18-250_M-18-250
Allen	Krug	allen.krug@xcelenergy.com	Xcel Energy	414 Nicollet Mall-7th fl Minneapolis, MN 55401	Electronic Service	No	OFF_SL_18-250_M-18-250
Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W Farmington, MN 55024	Electronic Service	No	OFF_SL_18-250_M-18-250
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Electronic Service	No	OFF_SL_18-250_M-18-250
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_18-250_M-18-250
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_18-250_M-18-250
Susan	Romans	sromans@allete.com	Minnesota Power	30 West Superior Street Legal Dept Duluth, MN 55802	Electronic Service	No	OFF_SL_18-250_M-18-250
Lynnette	Sweet	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_18-250_M-18-250

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jenna	Warmuth	jwarmuth@mnpower.com	Minnesota Power	30 W Superior St Duluth, MN 55802-2093	Electronic Service	No	OFF_SL_18-250_M-18-250
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_18-250_M-18-250