

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of Minnesota Power’s Petition
for Interpretation of Terms and Conditions of
Service to Verso Minnesota Wisconsin LLC

PUC Docket No. E-015/M-21-593

INITIAL COMMENT

The Large Power Intervenors (“LPI”)¹ submit this comment in response to the applicable notice of comment period² issued by the Minnesota Public Utilities Commission (“Commission”) in PUC Docket No. E-015/M-21-593 related to Minnesota Power’s (also “MP” or the “Company”) Petition for Interpretation of Terms and Conditions of Service to Verso Minnesota Wisconsin LLC (“Verso”).³

I. INTRODUCTION

On August 2, 2021, Minnesota Power filed the Petition, requesting expedited review of a novel and procedurally awkward issue—a contract dispute between it and Verso.⁴ In particular, Minnesota Power seeks a Commission order interpreting the electric service agreement (“ESA”) between the Company and Verso such that “Verso has tariff obligations and owes minimum ‘take or pay’ payments during the term of the ESA.”⁵ The Petition also seeks further “[c]larification that large power take or pay agreements do not include an assumption that the public utility has a duty to mitigate [damages, and to] clarify the terms of similar ESAs within the Commission’s jurisdiction and provide clarity for parties negotiating future agreements.”⁶ Minnesota Power is

¹ 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.

² Notice of Comment Period (Aug. 4, 2021) (eDocket No. 20218-176805-01) (“Notice”). The Notice seeks comments on whether: (1) Verso has obligations to Minnesota Power pursuant to the electric service agreement between the two parties; or (2) there are any issues or concerns related to this matter.

³ Minnesota Power Initial Filing (Aug. 2, 2021) (eDocket No. 20218-176742-01) (“Petition”).

⁴ The Company indicates that expedited review is necessary based on its anticipated November 1, 2021 rate case filing and the potential acquisition of Verso’s parent company.

⁵ Petition at Filing Letter, p. 1.

⁶ Petition at 21. The Petition provides additional details of the ongoing contract dispute between the Company and Verso. For reasons articulated below, LPI does not take positions on the ongoing dispute that is distinct to Minnesota Power and Verso, and, as such, it will leave the factual and procedural details specific to the contract dispute to the Company and Verso.

seeking Commission action on these issues, which could substantially impact ratepayers,⁷ on an abbreviated timeframe. LPI is troubled by Minnesota Power’s characterization of the relief it is seeking from the Commission, and authority allegedly supporting that relief, which puts the Commission in the unfortunate position of adjudicating the scope of its jurisdiction.

Based on the legal analysis contained herein, the Commission does not have authority to grant the requested relief. Therefore, LPI respectfully requests that the Commission dismiss the Petition with prejudice to permit Minnesota Power to pursue its breach of contract claims in state district court, which is the proper venue to address Minnesota Power’s claims. Alternatively, should the Commission disagree and determine it has jurisdiction to address the relief sought in the Petition, 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.

II. ANALYSIS

A. The Commission Lacks Jurisdiction to Provide the Declaratory Relief Sought by Minnesota Power

1. The Minnesota Declaratory Judgment Act Does Not Confer Authority Upon the Commission

The Petition must be construed under the Declaratory Judgment Act (or the “DJA”),⁸ which governs declaratory judgment actions. The Declaratory Judgment Act establishes that “[c]ourts of record...shall have power to declare rights, status, and other legal relations” under a contract.⁹ Article VI of the Minnesota Constitution provides additional guidance and specifically confers “[t]he judicial power of the state...in a supreme court, a court of appeals, if established by the legislature, a district court and such other courts, judicial officers and commissioners with jurisdiction inferior to the district court *as the legislature may establish.*”¹⁰ Noticeably, reference to the Commission or any other agency is absent from this language. The Commission is also absent from Minnesota Statutes Chapters 480-494, which are the enabling statutes for the

⁷ LPI is expressly opposed to any future attempt by Minnesota Power to seek cost recovery from other ratepayers.

⁸ Minn. Stat. ch. 555.

⁹ Minn. Stat. § 555.01.

¹⁰ Minn. Const. art. 6, § 1 (emphasis added).

judiciary.¹¹ The enabling statutes expressly provide that “the district courts shall have original jurisdiction [over]...all civil actions.”¹² To be sure, a request for declaratory relief based on an underlying claim for breach of contract, like the one presented by Minnesota Power in the Petition, is a civil action subject to the jurisdiction of the district courts.¹³ Accordingly, based on the explicit language of the DJA, which is aided by the additional guidance of the Minnesota Constitution, LPI asserts that the Commission does not have jurisdiction to grant the relief sought by Minnesota Power.

To be sure, Minnesota Power’s requested relief is substantively equivalent to section 555.02 of the DJA, which governs review of a “written contract” when a party is seeking determination of “any question of construction or validity arising under [the contract].”¹⁴ Here, Minnesota Power requests that the Commission “interpret the ESA to require Verso to fulfill its...obligations” under the contract.¹⁵ Specifically, the Company seeks a Commission “finding that Verso has tariff obligations and owes minimum...payments...[, Minnesota Power further] requests that the Commission affirm that the provisions of the ESA explicitly set forth Verso’s continuing obligations, which [shall] remain in full force and effect.”¹⁶ Stated plainly, Minnesota Power is seeking the Commission’s interpretation of its written contract with Verso, in order to “have determined [its] question of construction...[and to] obtain a declaration of rights.”¹⁷ This is precisely the relief contemplated by the DJA, and therefore, the relief sought by Minnesota Power’s Petition must be reviewed thereunder. As such, the Commission must first find that it has authority to issue orders pursuant to the Declaratory Judgment Act. LPI respectfully asserts that it does not and believes it is inappropriate for Minnesota Power to have put the Commission in the position of addressing only one aspect of Minnesota Power’s claims.

The Commission’s enabling statutes fail to provide alternative means to confer jurisdiction over the Petition. Under well-established Minnesota Supreme Court precedent, the Commission

¹¹ Minn. Stat. chs. 480-494.

¹² Minn. Stat. § 484.01.

¹³ *Sessions v. State*, 666 N.W.2d 718, 722, n.1 (Minn. 2003) (declining to address a criminal defendant’s constitutional right to counsel claim, because it was framed like a breach of contract issue, which “is a civil claim that does not fit” with the matters at issue).

¹⁴ Minn. Stat. § 555.02.

¹⁵ Petition at 21.

¹⁶ Petition at Filing Letter.

¹⁷ Minn. Stat. § 555.02.

is a creature of statute, possessing only those powers expressly granted to it by the Legislature.¹⁸ To skirt the Supreme Court’s standard, Minnesota Power seeks to establish the Commission’s authority by broadly claiming that Minn. Stat. §§ 216B.03, 216B.04, 216B.05, subd. 2a, 216B.07, 216B.25, 216B.17, and/or 216B.21 grant either plenary or investigative jurisdiction over the ESA.¹⁹ However, none of Minnesota Power’s cited authority endows the Commission with jurisdiction over a strict matter of contract interpretation, which is the issue in this proceeding. Indeed, even Minn. Stat. § 216B.05, subd. 2(a), which governs electric service contracts, only vests in the Commission the power to approve such contracts within the context of its duties to set rates. LPI contends that Minnesota Power’s jurisdictional arguments in support of Commission jurisdiction over a contract dispute between a single customer and the utility are neither fairly drawn nor fairly evident, and, thus, inconsistent with the Supreme Court’s direction in *Peoples Natural Gas Co.* Therefore, pursuant to the DJA, the Commission does not have authority to award the relief sought by the Petition, and the Commission should dismiss this matter with prejudice.

2. The Cases and Order Cited by Minnesota Power in Support of Commission Review Are Inapposite

The Minnesota Supreme Court cases and Commission order cited by Minnesota Power in support of its claim that the Commission possesses jurisdiction to award the relief sought by the Petition do not cure the jurisdictional defect presented by the DJA. Further, neither of the Supreme Court cases nor the previous Commission order restrict the judiciary’s ability to adjudicate the matters outlined in the Petition.

Minnesota Power misconstrues the Minnesota Supreme Court’s holdings in *Hoffman v. Northern States Power Co.* in support of its claim that the Commission has jurisdiction to provide the declaratory relief requested in the Petition.²⁰ Specifically, Minnesota Power claims that

[t]he Commission has jurisdiction to interpret the ESA as a part of the Company’s tariffs under the filed rate and primary jurisdiction

¹⁸ *Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985) (“It is elementary that the Commission, being a creature of statute, has only those powers given to it by the legislature. The legislature states what the agency is to do and how it is to do it. While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.” (Internal quotation marks and citation omitted)).

¹⁹ Petition at 8, notes 5-6.

²⁰ *Id.* at 8-9, ¶ 12.

doctrines...the Commission [has] 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.^[21]

While *Hoffman* provides jurisdictional authority to agencies in certain situations, the case confirms that the courts (not the Commission) may adjudicate the issues presented in the Petition.

In *Hoffman*, the Minnesota Supreme Court considered a breach of contract claim initiated by customers against Northern States Power Company (“NSP”) seeking both injunctive relief and compensatory damages.²² The claims in that case were based upon a breach of contract claim grounded in NSP’s technical duties to maintain equipment pursuant to its tariff.²³ Following motions before the district court and subsequent court of appeals consideration, the Minnesota Supreme Court granted appellants’ petition for further review on “whether the filed rate doctrine or the primary jurisdiction doctrine precluded the district court from adjudicating the action.”²⁴

The Court first analyzed the filed rate doctrine with respect to the injunctive relief sought by appellants. Stated plainly, the filed rate doctrine precludes judicial review of issues that will interfere with the Commission’s ratemaking function, recognizing that rate-setting is a legislative function for which courts are “ill-suited” to determine the reasonableness of the rates established by the Commission.²⁵ Acknowledging that the Minnesota Legislature vested broad authority to the Commission pursuant to Chapter 216B, the Minnesota Supreme Court went on to explain that “allowing courts to examine a utility rate structure that has been approved by the MPUC would infringe upon the authority delegated by the legislature to the MPUC, and would therefore run afoul of the filed rate doctrine.”²⁶ Relevant here, the Court went on to recognize that “the filed rate doctrine does not bar a court from considering a request to enforce the clear terms of an agency-approved tariff. ... [In such a situation the] judiciary is simply asked to enforce the terms

²¹ *Id.* (citing *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 42-52 (Minn. 2009)).

²² *Hoffman v. N. States. Power Co.*, 764 N.W.2d 34, 38 (Minn. 2009).

²³ *Id.* at 38-40.

²⁴ *Id.*

²⁵ *Id.* at 42.

²⁶ *Id.* at 43.

of a tariff as written, *just as it would in an ordinary contract action.*”²⁷ The Court ultimately held that the filed rate doctrine did not bar judicial review of the appellants’ injunctive relief claim.²⁸

Consistent with the *Hoffman* decision, the filed rate doctrine does not preclude judicial review of the claims set forth in the Petition, nor does it bestow exclusive jurisdiction upon the Commission. This is because Minnesota Power seeks only an interpretation of the specific take or pay terms of the ESA to determine whether Verso has ongoing payment obligations.²⁹ In other words, the Company seeks to enforce the terms of the ESA that are subject to a contract dispute between the utility and a specific customer (*i.e.*, not related to Minnesota Power’s rates). Consistent with the holding in *Hoffman*,³⁰ judicial review of a contract dispute is not barred by the filed rate doctrine. As such, the Commission does not possess exclusive jurisdiction over the Petition, and Minnesota Power’s reliance on the *Hoffman* decision is misplaced.

The *Hoffman* decision next addresses the primary jurisdiction doctrine, which is a “prudential measure under which a court acknowledges that, even if the court may review the claims before it, the claims involve some issues that are better suited to the special competence and expertise of a regulating agency.”³¹ The Court elaborates on the definition by explaining that the primary jurisdiction doctrine does not apply if the issues raised are judicial in nature unless the Commission is “explicitly granted” jurisdiction over the matter.³² In determining whether a matter is “inherently judicial” the courts will look to whether the matter creates issues of fact that are not within the typical experience of judges.³³ Though the Supreme Court explicitly confirmed that the Legislature “has not vested in the MPUC exclusive jurisdiction over claims related to the tariffs of regulated utilities,” in *Hoffman*, the Court found that interpretation of the tariff required technical

²⁷ *Id.* at 44 (emphasis added).

²⁸ *Id.* at 45-46. For the sake of clarity, LPI notes that the Court did hold that the filed rate doctrine barred its ability to review the compensatory damages claim, because “appellants’ claim...implicates the reasonableness of the agency-approved rate and would lead to discrimination between ratepayers.” However, this determination is irrelevant to the issue presented by the Petition, requiring merely judicial review of contract terms in the ESA, and does not divest the judiciary from its ability to adjudicate this matter. *Id.* at 48.

²⁹ Petition at 8, ¶ 9.

³⁰ *Hoffman*, 764 N.W.2d at 45-46.

³¹ *Id.* at 49.

³² *Id.*

³³ *Id.* (citation omitted).

expertise based on the specific technical aspects related to connection and maintenance of the utility's equipment.³⁴

Importantly, the technical concerns that led to the Minnesota Supreme Court referring the *Hoffman* matter to the Commission are not present in this case. As articulated throughout, Minnesota Power seeks interpretation of the payment terms of the ESA,³⁵ a contract issue squarely within the realm of judicial review. Unlike *Hoffman*, where the Court determined that ambiguous and technical terms of the tariff required the Commission's expertise, interpretation of the terms of a payment obligation is squarely within the realm of the judiciary's jurisdiction.³⁶

Minnesota Power also incorrectly relies on an order issued by the Commission in PUC Docket No. E-015/M-08-1344 to bolster its claim that the Commission possesses plenary jurisdiction over ESAs.³⁷ During the 2008 Proceeding, the Commission, on its own motion, compelled Minnesota Power to file comments responding to questions "relating to the interaction between the terms of the Company's ESAs and the Company's tariffs and associated service regulations."³⁸ While the Commission ultimately found that it did indeed possess plenary authority over the review of ESAs, it did so for the purpose of consideration of ESAs in situations where an ESA "is in conflict with tariffs, riders, or service regulations."³⁹ Missing from the ESA Order is any reference to the present issue, where the utility seeks a declaratory judgment based on specific terms agreed upon by distinct parties to a specific ESA. LPI respectfully asserts that the Commission's plenary authority described in the ESA Order should not extend to the

³⁴ *Id.* at 49-52. LPI also notes that Minnesota Power's reliance on *Siewert v. N. States Power Co.*, is similarly misplaced for the same reasons outlined in *Hoffman*. The *Siewert* case holds that neither the primary jurisdiction doctrine nor the filed rate doctrine "suggests that the MPUC has sole jurisdiction over all claims that may be asserted." See 793 N.W.2d 272, 285 (Minn. 2011).

³⁵ Petition at 8, ¶ 9.

³⁶ See also, *Siewert*, 793 N.W.2d at 286 (confirming that the filed rate doctrine does not apply when review "does not require extensive interpretation of technical terms").

³⁷ See Petition at 8, ¶ 10 (citing *In the Matter of Minnesota Power's Petition in Response to the Minnesota Public Utilities Commission's September 5, 2008 Order in Docket No. E-015/M-08-321*, PUC Docket No. E-015/M-08-1344, Order Accepting Petition, Modifying Electric Service Agreement Procedures, and Closing Docket No. E-015/M-08-321 (Mar. 2, 2009) (the "ESA Order" and when referring to the proceeding generally, the "2008 Proceeding").

³⁸ ESA Order at 1.

³⁹ *Id.* at 6. The ESA Order also notes that LPI encouraged the reaffirmation of Commission plenary authority over ESAs; however, that position was based on Commission jurisdiction over ESAs with respect to the interaction between the agreements, applicable tariffs, and the Commission's authority over public utility rates. In no way should LPI's position in the 2008 Proceeding be construed as a jurisdictional position on a private declaratory judgment action.

declaratory judgment relief sought in the Petition. To do so, would be both contrary to the precedent set forth in *Peoples Natural Gas Co.* and the intent to confer jurisdiction upon courts of record pursuant to the DJA.

In sum, Minnesota Power fails to demonstrate that the judiciary lacks jurisdiction to adjudicate the claims outlined in the Petition. LPI therefore requests that the Petition be dismissed with prejudice.

3. Notwithstanding the Commission’s Inability to Provide a Declaratory Judgment, Minnesota Power’s Request for Relief Is Also a *De Facto* Request for Damages, Which Is Beyond the Commission’s Scope of Authority

The fact that the Petition places the Commission in the awkward position of acting in excess of its jurisdiction is evident in the ultimate relief sought by Minnesota Power. Despite Minnesota Power’s contention that it “is not asking the Commission to make factual determinations regarding the amount that Verso owes Minnesota Power, or to enforce Verso’s payment obligations,”⁴⁰ the underlying facts in this proceeding coupled with other statements made by Minnesota Power demonstrate that the relief sought by Minnesota Power is an order that effectively awards damages.

Minnesota Power clarifies that the dispute with Verso relates to the “take or pay provision in the ESA [that] requires ... Verso [to] pay for a contractually agreed-upon Minimum Firm Demand amount of power per month for a specified amount of time whether Verso uses the power or not.”⁴¹ With regard to the Minimum Firm Demand requirement, Minnesota Power’s request for a declaratory judgment urges “the Commission [to] interpret the ESA to require Verso to *pay* the contracted amounts regardless of any subsequent customers at [the facility].”⁴² Because the dollar amount sought by Minnesota Power is a “contracted amount[.]” that can be derived from the ESA, Minnesota Power’s request for declaratory relief is effectively a request for a determination of the monetary damages Verso owes to Minnesota Power under the guise of a contract interpretation. Under longstanding authority, “the power to award monetary damages to a

⁴⁰ Petition at 2.

⁴¹ *Id.* at 14, ¶ 43.

⁴² *Id.* at 20, ¶ 79 (emphasis added).

complaining party is not one that the MPUC enjoys.”⁴³ However, here, Minnesota Power seeks Commission approval to collect monetary damages via a favorable interpretation of the ESA. LPI urges the Commission to be mindful of existing Minnesota Supreme Court precedent restricting its authority to award damages. Minnesota Power’s attempts to circumvent longstanding restrictions upon the Commission’s authority should be ignored. LPI, therefore, respectfully requests that the Commission dismiss Minnesota Power’s Petition with prejudice, based on the Commission’s lack of jurisdiction to provide either the declaratory or monetary relief sought by Minnesota Power.

B. In the Alternative, the Substantive Aspects of the Petition Should Be Dismissed Without Prejudice

It is deeply concerning to LPI (and it suspects other stakeholders) that Minnesota Power made explicit statements regarding the potential for cost recovery from other ratepayers.⁴⁴ To be abundantly clear, LPI strongly opposes any attempt by Minnesota Power to collect the costs associated with the Verso ESA from Minnesota Power’s other ratepayers. To the extent Minnesota Power possesses a valid claim against Verso, the proper venue is state district court and the proper party from which Minnesota Power can seek remuneration is exclusively Verso.

In the event that the Commission disagrees and asserts it has jurisdiction to rule on the substantive requests made by Minnesota Power in the Petition, the Commission should analyze the Petition within the context of its previous order denying Minnesota Power’s request for deferred accounting as well as the public interest concerns associated with making a decision that may significantly impact ratepayers on an expedited basis with a limited evidentiary record. In the instant Petition, Minnesota Power unambiguously confirms that a substantive determination in this proceeding could lead to it seeking cost recovery of the Verso ESA costs from its other customers. In the Petition, Minnesota Power states:

⁴³ *Siewert v. N. States Power Co.*, 793 N.W.2d 272, 278 (Minn. 2011) (citing *Peoples Nat. Gas Co.*, 369 N.W.2d at 535-36).

⁴⁴ For purposes of this section, LPI does not address whether Verso should be ordered to, or will otherwise agree to, pay the Minimum Firm Demand payments at issue. Because LPI has its own distinct interest in the substantive outcome of this proceeding, it declines to take a position on the contract dispute between Verso and Minnesota Power.

If the Commission determines that the take or pay provisions require Verso to fulfill its full contractual obligations under the ESA regardless of whether it is taking service, Minnesota Power stands to receive millions of dollars to satisfy Verso's remaining ESA obligations *and would not need to burden its other customers to recoup this loss.*^[45]

If the Commission rejects LPI's request to dismiss the Petition with prejudice, LPI asserts that dismissal without prejudice and deferral of the Petition to a formal ratemaking process is proper for the following reasons.

First, Minnesota Power's admission that it will potentially seek cost recovery from other ratepayers is, in essence, relitigating the Commission's previous denial of Minnesota Power's deferred accounting request. By way of background, on November 4, 2020, Minnesota Power filed a petition for deferred accounting due to the idling of the Keetac and Verso facilities.⁴⁶ Minnesota Power claimed that it could lose \$8 million in 2020 and \$21 million in 2021 based on the lost revenue.⁴⁷ Minnesota Power went on to seek a Commission determination "that it is reasonable and prudent for the Company to create a regulatory asset and recover for the revenue deficiency created by the idling of Keetac and Verso in a future rate case."⁴⁸ The Commission disagreed with Minnesota Power and denied the Deferred Accounting Petition. The Deferred Accounting Order, among other things, articulated the Commission's recognition of the risks of Minnesota Power over-recovering from ratepayers.⁴⁹ Like the Deferred Accounting proceeding,

⁴⁵ Petition at 5-6 (emphasis added). Minnesota Power's Vice President of Customer Service, Frank Frederickson, also confirmed to the Duluth News Tribune that "if Verso doesn't agree to pay by [November], Minnesota Power will seek to make up the difference in its upcoming rate case." Jimmy Lovrien, "Minnesota Power seeks 'Millions' from Verso," Duluth News Tribune (Aug. 17, 2021).

⁴⁶ *See In the Matter of Minnesota Power's Petition for Approval to Track and Defer Lost Large Industrial Customer Sales Resulting from the COVID-19 Pandemic*, PUC Docket No. E-015/M-20-814, Order Denying Petition at 1, 3 (May 13, 2021) (the "Deferred Accounting Order"). As noted by the Commission, "[t]raditional ratemaking practice uses a fully developed test year to provide the most accurate possible picture of the utility's total financial condition, and mechanisms like deferred accounting represent exceptions to this practice by allowing utilities to track and defer certain extraordinary and significant expenses for future recovery. Considering one expense in isolation, without considering where costs may have declined, carries risks of over-recovery that are seldom justified. Accordingly, deferred accounting is a practice that the Commission authorizes sparingly." *Id.* at 3.

⁴⁷ *Id.*

⁴⁸ *In the Matter of Minnesota Power's Petition for Approval to Track and Defer Lost Large Industrial Customer Sales Resulting from the COVID-19 Pandemic*, PUC Docket No. E-015/M-20-814, Petition at 24 (Nov. 4, 2020) (the "Deferred Accounting Petition").

⁴⁹ Deferred Accounting Order at 5.

LPI believes the same risk of over-recovery is present in this matter.⁵⁰ And LPI also agrees with the Commission's conclusion that Minnesota Power can file a rate case under the terms of the 2019 rate case resolution,⁵¹ rather than seek a Commission determination in an expedited miscellaneous proceeding.

To be sure, a substantive determination in this proceeding will benefit Minnesota Power. Through the Petition, Minnesota Power attempts to create a win/win situation for itself and its shareholders by seeking full cost recovery of its claimed lost revenues either from Verso directly or by attempting to foist the lost revenue upon other ratepayers.⁵² And Minnesota Power seeks to do this via a fast-tracked Commission process with limited regulatory review. The Commission has already affirmatively communicated to Minnesota Power that the proper course of action is to pursue a rate case.⁵³ LPI, therefore, urges the Commission to remain consistent with the Deferred Accounting Order and decline to review any substantive issues related to the costs associated with the Verso facility outside the context of a formal ratemaking proceeding.

Furthermore, Minnesota Power's request for an expedited decision in this matter is inconsistent with the public interest and the Commission's directive to set just and reasonable rates pursuant to Minn. Stat. § 216B.03. By seeking expedited review and forcing accelerated responses to the Petition, Minnesota Power is placing significant burdens on ratepayers (and the Commission), forcing them to ascertain the complexities of the Petition in a limited timeframe and with limited information. In fact, it is impossible for stakeholders to fully ascertain the potential repercussions of a substantive decision in this docket, nor has Minnesota Power transparently explained if, how, or when it will seek recovery from ratepayers. LPI stresses that a more thorough, thoughtful approach is consistent with the public interest. Therefore, in order to avoid the potential unintended consequences of a substantive determination in this docket, LPI recommends that the Petition be dismissed without prejudice, allowing parties the opportunity to

⁵⁰ Petition at 17, ¶ 57. Though LPI does not substantively take a position on the ongoing contract issue between Verso and Minnesota Power, it acknowledges that Verso's concerns related to utility over-recovery persist in the instant docket.

⁵¹ Deferred Accounting Order at 5. *See also In the Matter of the Emergency Petition of Minnesota Power for Approval to Move Asset-Based Wholesale Sales Credits to the Fuel Clause Adjustment and Resolve Rate Case*, PUC Docket No. E-015/M-20-429, Order Approving Petition and Resolving Rate Case with Conditions (Aug. 7, 2020).

⁵² Petition at 5-6.

⁵³ Deferred Accounting Order at 5.

fully digest the potential cost-recovery issues within the comprehensive context of a formal ratemaking proceeding.

III. CONCLUSION

LPI is grateful to the Commission for the opportunity to provide this initial comment pursuant to the Notice, and recognizes the procedurally awkward nature of Minnesota Power's requests. As described herein, LPI maintains that the Commission does not have the requisite jurisdiction to substantively decide the issues outlined in the Petition, and because the Commission lacks authority to make a determination in this matter, LPI requests that the Commission dismiss the Petition with prejudice. Minnesota Power would then be free to pursue its claims in state district court against Verso, the proper defendant in Minnesota Power's breach of contract claim. Alternatively, should the Commission determine it may properly rule on Minnesota Power's requests, LPI urges the Commission to dismiss the Petition without prejudice, deferring this matter, and the potential ratemaking implications therein (if any), to a formal ratemaking process. LPI looks forward to continuing to work with stakeholders on this matter, and it reserves the right to submit a reply comment pursuant to the Notice.

Dated: August 30, 2021

Respectfully submitted,

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