

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: August 20, 2015 Agenda Item # **6

Company: Dakota Electric Association

Docket No. E-111/GR-14-482
In the Matter of the Application of Dakota Electric Association for Authority to Increase Rates for Electric Service in Minnesota

Issue: Should the Commission grant the petition for reconsideration of its June 8, 2015 *Findings of Fact, Conclusions, and Order* as requested by the Office of the Attorney General?

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Relevant Documents

Commission’s Findings of Fact, Conclusions, and Order June 8, 2015
Office of Attorney General - Petition for Reconsideration..... June 29, 2015
Dakota Electric - Answer to the Petition for Reconsideration.....July 9, 2015

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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August 10, 2015

Statement of the Issue

Should the Commission grant the petition for reconsideration of its June 8, 2015 *Findings of Fact, Conclusions, and Order* as requested by the Office of the Attorney General?

Minnesota Statutes and Commission Rules

Petitions for reconsideration are subject to Minn. Stat. § 216B.27, and Minn. Rules, Part 7829.3000.

Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty days of the request. If the Commission takes no action on the Office of the Attorney General's ("OAG") petition, the request is considered denied as of August 28, 2015.

The Commission may also take specific action to either grant or deny the petition. If the Commission takes up the OAG's request for reconsideration, the Commission may: (1) reconsider, and then (a) reverse, (b) modify or (c) affirm its initial decision, or (2) deny the petition for reconsideration and thereby affirm the initial decision.

The Commission may also reconsider or clarify its Order on its own motion.

Background

On June 8, 2015, the Commission issued its Findings of Fact, Conclusions, and Order ("June 8 Order"). In its June 8 Order, the Commission approved a payroll annualization adjustment that includes "the restoration of \$150,000 in residual cost reductions associated with the unusually high number of overall [staff] vacancies in the 2013 test year."¹

On June 29, 2015, the OAG filed a Petition for Reconsideration. The OAG requested that the Commission reconsider its decision granting the Company a \$150,000 test year adjustment for staffing costs.

On July 9, 2015, Dakota Electric Association ("Dakota Electric" or "DEA") answered the OAG Petition and requested the Commission to deny reconsideration.

Commission Decision

Oral argument and deliberations were held on April 23, 2015. In oral argument, Dakota Electric proposed a new option for the Commission's consideration as resolution to the disputed annualization of payroll and its associated benefit costs (i.e., Staffing Changes issue).

This new alternative lowered DEA's initial \$690,427 test year adjustment to a revised adjustment range of \$354,745 to \$404,745.² DEA believed its test year vacancy period increase, which nearly doubled over the previous year and was quantified in Staff briefing papers, supported its proposition.

¹ June 8 Order at p. 10

² These amounts include both the existing position vacancies adjustment and an incremental position adjustment.

Chair Heydinger made a motion to approve Dakota Electric's new, alternative position taken at oral argument as a reasonable compromise, specifically to: annualize wage and benefit costs of the two positions created due to the death of employees, add the one new position and allow for an additional \$150,000 for excessive vacancies in the test year, for an approximate adjustment total of \$354,745,³ subject to check.

The motion passed 5-0.

Reconsideration Item

Payroll Annualization (Staffing Changes)

OAG

In its June 29, 2015 Petition for Reconsideration, the OAG requested, of the three granted upward adjustments that make up the approved payroll annualization adjustment, that the Commission reconsider the generalized \$150,000 adjustment related to excessive vacancies. The OAG submitted that the Commission's conclusion that Dakota demonstrated that its 2013 test-year *costs* were lower than they would likely be going forward is not supported in the record, rather it appears that the Commission relied on a vacancy duration analysis presented for the first time in the staff briefing papers. Additionally, the OAG argued that this adjustment amount has no record support and, because it was introduced for the first time in oral argument, its accuracy could not be vetted by other parties. Furthermore, the OAG argued that the \$150,000 adjustment is duplicative of the approved adjustment for two atypical extended vacancies.

DEA

In its July 9, 2015 answer, Dakota Electric requested that the Commission deny the OAG Petition because the Petition raises no new issues or new arguments and provides no basis for overturning the Commission's decision. DEA asserted the record demonstrated that worker-days lost to vacancies during the 2013 test year were nearly double those lost in previous year. Therefore, the Commission found that DEA demonstrated on the record that 2013 test year payroll costs were lower than ongoing payroll costs are likely to be, due to known and measurable changes associated with normal levels of employee turnover and the addition of a new position. DEA contended the Commission's June 8, 2015 Order thoroughly and thoughtfully examined the issue of staffing costs and resolved this matter consistent with the facts, the law, and the public interest.

³ This amount includes \$101,183 for the incremental staff position, \$103,562 restoration of cost reductions from atypical vacancies due to terminal illness, and \$150,000 restoration of cost reductions associated with unusually high number of overall vacancies.

Staff Comments

This issue is discussed in the *Payroll Annualization Adjustment* section of the June 8, 2015 Commission Order (on pages 8 – 10).

In DEA's initial filing, the company included a \$589,244 payroll annualization adjustment for its existing positions' vacancies. The effect of the requested adjustment assumed all existing positions would be filled 100% of the time. The settlement between DEA and the Department recommended approval of the \$589,244 total; however, the OAG and the ALJ recommended no adjustment was needed.

Despite no change in position count, information⁴ included in the record showed that existing position vacancy periods were experienced in 2012 and 2013, and lost-worker-periods approximated 28.5 months and 52 months, respectively.⁵ In oral arguments, DEA argued that this significant increase in the vacant position time supported its position, that its 2013 test year experience was excessive, and that an adjustment was warranted. As a compromise, DEA provided the Commission with an alternative adjustment amount, and proposed a range of \$150,000 to \$200,000, plus \$103,562 tied to the vacancies of two employees struck by terminal illness.

Overall, the payroll annualization adjustment associated with lost worker-days approved by the Commission totaled \$253,562 (\$150,000 + \$103,562), which is less than half of DEA's original, proposed \$589,244 adjustment. Although DEA expressed its proposed alternate adjustment (for the restoration of test year payroll savings resulting from vacancies) in the form of two components, Staff does not agree with the OAG that the \$150,000 portion of the approved adjustment is duplicative.

Staff believes the Commission carefully considered this matter in its deliberations and is not persuaded that the Commission should reconsider its decision.

⁴ Ex. 203, Schedule SL-4 (Lee Direct)

⁵ Staff briefing Papers issued April 15, 2015 (page 15).

Decision Alternatives

A. Rehearing and Reconsideration of the June 8, 2015 Order

1. Grant the Office of Attorney General's petition for reconsideration, or
2. On its own motion, reconsider the June 8, 2015 Order, or
3. Deny the Office of Attorney General's request for reconsideration, or
4. Take no action and allow the Office of Attorney General's petition for reconsideration to be denied by operation of law.

B. If the Commission grants the Office of Attorney General's petition (Alternative A-1), or, on its own motion reconsiders the June 8, 2015 Order (Alternative A-2), it may

1. Modify the Order and grant the OAG's request to disallow the \$150,000 adjustment associated with excessive test year vacancies, thus revising the approved payroll annualization adjustment to total \$204,745 (\$101,183 plus \$103,562), and/or
2. Make any other changes it deems appropriate or necessary, or
3. Affirm the initial decision in the June 8, 2015 Order.