

**STATE OF MINNESOTA**

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Dan Lipschultz	Vice Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

**In the Matter of Basin Electric Power  
Cooperative's Optional Integrated  
Resource Plan**

**Docket No. ET6125/RP-19-425**

**BASIN ELECTRIC POWER COOPERATIVE'S RESPONSE IN OPPOSITION TO  
MOTION TO COMPEL BASIN ELECTRIC'S RESPONSE TO INFORMATION  
REQUESTS BY SIERRA CLUB, FRESH ENERGY, AND THE MINNESOTA CENTER  
FOR ENVIRONMENTAL ADVOCACY**

**I. INTRODUCTION**

The issue before the Minnesota Public Utilities Commission (Commission or PUC) is whether Basin Electric Power Cooperative (Basin Electric or Cooperative) has satisfied the requirements of the optional integrated resource plan (O-IRP) report statute, Minn. Stat. § 216B.2422, subd. 2b (O-IRP Report Statute or Statute). Those requirements are clear and very simple: Basin Electric must submit a report that provides information related to “projected demand levels for the next 15 years and generation resources to meet any projected generation deficiencies.”<sup>1</sup> There is no serious dispute regarding whether Basin Electric has satisfied the requirements of the Statute. As Intervenors, the Sierra Club, Fresh Energy, and the Minnesota Center for Environmental Advocacy (collectively, Environmental Intervenors), recognize, the forecast was provided in Exhibits B1 and B2 of its O-IRP report (O-IRP Report or Report),<sup>2</sup> and

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<sup>1</sup> Minn. Stat. § 216B.2422, subd. 2b.

<sup>2</sup> Mot. to Compel at 2 (citing Basin Elec.'s 2019 Optional Integrated Res. Plan Ex. B1 and B2).

the plan was provided on pages 5 and 6 of the Report,<sup>3</sup> and was further discussed within the 2018 Western Area Power Administration (WAPA) integrated resource plan (IRP).<sup>4</sup>

Environmental Intervenors, however, claim they are entitled to additional information that is “directly tied to the most foundational level of information relevant to a resource plan,” including the cost and affordability of existing and proposed generation, as well as the plans to acquire additional resources.<sup>5</sup> These requests clearly go beyond the information necessary to determine if Basin Electric complied with the reporting requirements in the Statute, and this is where Environmental Intervenors’ requests go too far. Requiring production of this information would turn what Environmental Intervenors concede is an advisory, streamlined report into a full-blown IRP review—precisely the opposite of what the Legislature intended when it passed the O-IRP Report Statute in 2012.

As the Environmental Intervenors concede, their information requests (IR) are calculated to solicit information to evaluate the adequacy of Basin Electric’s resource plan. The Commission, however, does not have resource planning jurisdiction over Basin Electric. The Legislature has recognized that the responsibility for resource planning for Basin Electric rests with the Cooperative’s Board of Directors. Thus, once Basin Electric establishes that its Report provides information regarding projected demand levels and generation resources as required under the Statute, Basin Electric’s job is done. Accordingly, the Environmental Intervenors’ motion to compel should be denied because (1) the IRs relate to resource planning and such matters are beyond the scope of the Commission’s jurisdiction given Basin Electric’s limited

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<sup>3</sup> Mot. to Compel at 2; 2019 Optional Integrated Res. Plan at 5-6.

<sup>4</sup> Mot. to Compel at 17-19; Basin Elec.’s Resp. to 1st Set of Info. Requests Ex. G at 134. A hyperlink to this report was inadvertently omitted from the 2019 O-IRP Report.

<sup>5</sup> Mot. to Compel at 3-4.

contacts with the State of Minnesota, and (2) there is no need for discovery because there is no dispute regarding the completeness of Basin's Electric's Report.

## II. BACKGROUND

Basin Electric filed its Report on June 27, 2019.<sup>6</sup> Environmental Intervenors later petitioned to intervene in the docket.<sup>7</sup> At the same time, Environmental Intervenors served extensive IRs on Basin Electric.<sup>8</sup> The Commission granted the Petition to Intervene and ordered Basin Electric to “respond to Information Requests from the parties that are within the statutory scope of this type of proceeding.”<sup>9</sup> The Commission further directed that if Basin Electric declined to respond, it should “file with the Commission specific objections to each separate request[,] . . . detailing why the particular request is beyond the scope of Minn. Stat. § 216B.2422, sub[d]. 2b.”<sup>10</sup> Basin Electric responded to the IRs by producing over 300 pages of documents and objected to others.<sup>11</sup>

The parties agree that Basin Electric's report projected demand out for 15 years. In addition, Environmental Intervenors, themselves, in their Motion to Compel describe, the significant and pertinent information Basin Electric produced in response to the IRs as well as in the Cooperative's Report. As Environmental Intervenors acknowledge, the Report “provides [Basin Electric's] load and resource forecast for [Midcontinent Independent System Operator (MISO)]” Zone 1 . . . and for MISO Zone 3 . . . . For MISO Zone 1, Basin projects its total load growing from 232 [megawatts (MWs)] in 2019 to 361 MW in 20[3]4.”<sup>12</sup> The Environmental Intervenors note that Basin Electric's Report projects the capacity of its generation resources will

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<sup>6</sup> Optional Integrated Res. Plan.

<sup>7</sup> Pet. to Intervene.

<sup>8</sup> 1st Set of Info. Requests.

<sup>9</sup> Order at 3.

<sup>10</sup> Order at 3.

<sup>11</sup> Basin Elec.'s Resp. to 1st Set of Info. Requests Exs. A-G.

<sup>12</sup> Mot. to Compel at 15

be 325 MWs in 2019, 250 MWs in 2023, 180 MWs in 2025, and that it has yet to secure capacity beginning in 2028.<sup>13</sup> Environmental Intervenors also recognize that Basin Electric has identified options to meet any resource deficiency through “ ‘short-term and long-term proposals for capacity or capacity and energy for its MISO and [Southwest Power Pool (SPP)] areas,’ as well as ‘renewable proposals for both MISO and SPP.’ ”<sup>14</sup>

Environmental Intervenors go on to explain that Basin Electric produced its WAPA IRP.<sup>15</sup> Environmental Intervenors recognize the WAPA IRP “provides greater insight into Basin’s resource planning process.”<sup>16</sup> Environmental Intervenors quote extensively from that WAPA IRP.<sup>17</sup> Specifically, Environmental Intervenors cite Basin Electric’s comments in the WAPA IRP that the Cooperative’s “needs can likely be met via bilateral contracts with neighboring utilities in the near term and then likely building peaking and intermediate natural gas facilities.”<sup>18</sup> Environmental Intervenors also note the WAPA IRP states that “wind resources make for a good way to reduce Basin Electric’s energy exposure.”<sup>19</sup>

Although Environmental Intervenors describe the detailed information Basin Electric has already produced, they nonetheless moved to compel disclosure of additional documents.<sup>20</sup> Environmental Intervenors argue that the O-IRP Report Statute allows broad discovery into Basin Electric’s generation assets.<sup>21</sup> They contend the information sought in their IRs “is needed to assess whether the [coal-fired generating] units [referenced in Basin Electric’s O-IRP Report] represent a cost effective source of electricity, and whether cleaner resources could meet Basin’s

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<sup>13</sup> Mot. to Compel at 15; Optional Integrated Res. Plan. Exs. A-B2.

<sup>14</sup> Mot. to Compel at 16 (citing Optional Integrated Res. Plan. at 5).

<sup>15</sup> Mot. to Compel at 17.

<sup>16</sup> Mot. to Compel at 17.

<sup>17</sup> Mot. to Compel at 17-18.

<sup>18</sup> Mot. to Compel at 18 (citing Basin Electric’s Resps. to 1st Set of Info. Requests Ex. G at 134).

<sup>19</sup> Mot. to Compel at 19 (citing Basin Electric’s Resps. to 1st Set of Info. Requests Ex. G at 134).

<sup>20</sup> Mot. to Compel.

<sup>21</sup> Mot. to Compel at 7-9.

Minnesota customers' needs more cost effectively."<sup>22</sup> Because Basin Electric has already satisfied—in fact exceeded—the Cooperative's obligations under the O-IRP Report Statute, Basin Electric submits this response in opposition to the Motion to Compel.

### **III. ARGUMENT**

The Commission should deny the Motion to Compel for two primary reasons. First, the IRs relate to matters pertaining to Basin Electric over which the Commission has no jurisdiction. Second, there is no dispute about the completeness of Basin Electric's Report or its compliance with the O-IRP Report Statute.

#### **A. The Motion to Compel Should Be Denied Because the IRs Relate to Matters Over which the Commission Lacks Jurisdiction.**

Because of the PUC's limited authority over Basin Electric, the Commission lacks jurisdiction to require the Cooperative to respond to the IRs. Cooperatives occupy a unique place in Minnesota's energy regulatory regime. "The Public Utilities Commission does not have broad regulatory authority over electric cooperatives . . . ."<sup>23</sup> The Commission's jurisdiction is limited "[b]ecause . . . cooperative electric associations are . . . effectively regulated and controlled by the membership."<sup>24</sup> Therefore, the Commission does not regulate the cooperatives' rates or reliability of service.<sup>25</sup> These decisions are entrusted to cooperatives' member-elected Boards of Directors. Indeed, cooperatives are expressly exempt from all provisions of the Public Utilities Act, unless specifically provided in the Act.<sup>26</sup>

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<sup>22</sup> Mot. to Compel at 20.

<sup>23</sup> *Taylor v. Beltrami Elec. Coop., Inc.*, 319 N.W.2d 52, 54 (Minn. 1982)

<sup>24</sup> Minn. Stat. § 216B.01.

<sup>25</sup> See Minn. Stat. §§ 216B.01, .026 (providing that the Commission regulates the rates of electric cooperatives only if the cooperative elects to be rate-regulated). The Commission's inability to regulate cooperatives' rates without their consent refutes Environmental Intervenors' argument that in evaluating a O-IRP Report, the Commission should consider "keeping customers' bills and utility's rates as low as practicable." Mot. to Compel at 6. The PUC has no jurisdiction over Basin Electric's rates.

<sup>26</sup> Minn. Stat. § 216B.01.

The IRP statute reflects the Commission’s limited jurisdiction over electric cooperatives writ large. The IRP statute provides that the Commission’s decision on a cooperative’s IRP is advisory only.<sup>27</sup> The Commission does not approve or direct the resource planning decisions for any cooperative. For all cooperatives, their member-elected Boards of Directors retain full resource-planning authority. The Commission’s jurisdiction is even more circumscribed under the O-IRP Report Statute with respect to certain cooperatives, like Basin Electric, that have limited contacts to Minnesota.<sup>28</sup> For Basin Electric and other “qualifying cooperatives,” they must only file an annual O-IRP Report that contains the information required by the Statute.<sup>29</sup>

Given that the Commission’s role is merely advisory to Basin Electric’s Board of Directors, and is further limited by the scope of the O-IRP Report, Environmental Intervenors’ broad IRs are outside the Commission’s jurisdiction. In their Motion to Compel, Environmental Intervenors explain they are seeking the information through their IRs because they “are interested in analyzing whether it would be economic and in the interest of Minnesota customers for Basin to transition away from fossil fuel resources to additional renewables; and are also interested in understanding Basin’s resource-decision-making process so that [they] can identify barriers to that transition.”<sup>30</sup> Respectfully, these are not decisions for Environmental Intervenors to make nor the Commission to order. Minnesota law places these policy judgments squarely within the discretion of Basin Electric’s Board of Directors. Allowing Environmental Intervenors to use IRs to obtain this information is unproductive and unreasonable, abuses the streamlined O-IRP process established by the Legislature, and requires the Commission to assert

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<sup>27</sup> Minn. Stat. § 216B.2422, subd. 2(b).

<sup>28</sup> See Minn. Stat. § 216B.2422, subd. 2b.

<sup>29</sup> Minn. Stat. § 216B.2422, subd. 2b.

<sup>30</sup> Mot. to Compel at 15.

jurisdiction in the absence of any statutory authority. The Commission should deny Environmental Intervenors' Motion to Compel.

**B. The Motion to Compel Should Be Denied Because the IRs Are Unrelated to the Matters Relevant in an O-IRP Report Proceeding.**

Environmental Intervenors have explicitly referenced the limited information required in an O-IRP Report.<sup>31</sup> Basin Electric submitted such information about its projected demand levels for the next 15 years and the generation resources necessary to meet any deficiencies. Accordingly, the remaining inquiry before the Commission is properly whether the Report is complete, i.e., provides demand projections for 15 years and the cooperative's plans to meet that demand. Environmental Intervenors' IRs are impermissible because they seek information regarding matters beyond the scope of the Statute and unrelated to whether the Report is complete. IRs must be reasonable.<sup>32</sup> Although not expressly applicable to proceedings directly before the Commission, looking to civil discovery rules can help aid the Commission in determining what discovery is reasonable.<sup>33</sup> Those rules limit discovery to relevant information.<sup>34</sup> Information is relevant if it will aid the decision maker in reaching a decision.<sup>35</sup> Therefore, for discovery requests to be "reasonable," they must be within the scope of the statute, relevant, and helpful to the decision-maker. Here, the decision-maker—Basin Electric's Board of Directors—is asserting that these discovery requests are not helpful and should be denied.

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<sup>31</sup> Mot. to Compel at 5.

<sup>32</sup> See Minn. R. 7843.0300, subp. 8. Minnesota Rules ch. 7843 is inapplicable to these proceedings. See *infra* § III.C.2. Basin Electric, however, concedes that IRs must be reasonable and within the scope of the Statute.

<sup>33</sup> The Commission has relied on the Minnesota Rules of Civil Procedure in evaluating the scope of permissible discovery. See, e.g., In the Matter of the Compl. of the Minn. All. for Fair Competition Against Minnegasco, Docket No. G-008/C-91-942, Protective Order at 2 (Feb. 24, 1992) (adopting scope of discovery standard for Minnesota Rules of Civil Procedure).

<sup>34</sup> Minn. R. Civ. P. 26.02(b) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.").

<sup>35</sup> See *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 920 (Minn. 1990).

The O-IRP Report Statute requires Basin Electric's Report to "include projected demand levels for the next 15 years and generation resources to meet any projected generation deficiencies."<sup>36</sup> Any Commission action thereon is advisory only.<sup>37</sup> Accordingly, the Commission merely determines whether the Report is complete.<sup>38</sup> Basin Electric's O-IRP Report is complete if Basin Electric projects load for 15 years and identifies a plan to meet that load.<sup>39</sup> So long as Basin Electric's Report meets this minimal standard, no further inquiry is appropriate. In the Commission's previous dispositions of Basin Electric's O-IRP Reports, the PUC did not inquire into, or opine on, the merits of the Report, including the reliability of Basin Electric's system.<sup>40</sup>

Environmental Intervenors attempt to broaden the Commission's limited inquiry into an evaluation of "whether Basin is securing the lowest cost, cleanest resources to meet customers' needs; whether it is giving fair consideration to renewable energy options; and whether it is foregoing opportunities to obtain low cost renewables in favor of short-term bilateral contracts with existing resources."<sup>41</sup> But those issues go far beyond determining that the Report has projected load for the next 15 years and offered a plan to meet that demand. The issues Environmental Intervenors want to address relate to topics that are outside the scope of the O-IRP Report Statute.

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<sup>36</sup> Minn. Stat. § 216B.2422, subd. 2b.

<sup>37</sup> Minn. Stat. § 216B.2422, subd. 2.

<sup>38</sup> *See, e.g.*, In the Matter of Basin Elec. Power Coop.'s Optional Integrated Res Plan Compliance Rpt., Docket No. ET-6125/RP-14-534, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 5 (Dec. 16, 2014); In the Matter of Basin Electric Power Coop.'s Optional Integrated Res. Plan Compliance Report, Docket No. ET-6125/RP-13-562, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Sept. 26, 2013); In the Matter of Basin Elec. Power Coop.'s Optional Integrated Res. Plan Compliance Rpt., Docket No. E-6125/RP-12-723, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Dec. 19, 2012).

<sup>39</sup> Minn. Stat. § 216B.2422, subd. 2b.

<sup>40</sup> Docket No. ET-6125/RP-14-534, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 5 (Dec. 16, 2014); Docket No. ET-6125/RP-13-562, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Sept. 26, 2013); Docket No. E-6125/RP-12-723, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Dec. 19, 2012).

<sup>41</sup> Mot. to Compel at 21.



Environmental Intervenors respond that “nothing in the O-IRP statute expressly limits the scope of the information the Commission may review in an O-IRP proceeding, nor does it limit discovery in an O-IRP proceeding.”<sup>42</sup> This limitation is inherent in the Statute’s narrow scope. Discovery must be relevant to the Statute’s narrow purpose.<sup>43</sup> Because the IRs are not relevant to the Statute’s narrow purpose, they are impermissible.

The Commission’s prior treatment of Basin Electric’s Reports supports the Cooperative’s understanding of the Commission’s limited role in O-IRP proceedings. In response to Basin Electric’s first three O-IRP Reports, the Commission simply acknowledged their receipt, found them complete, and closed the docket.<sup>44</sup> More recently, while acknowledging Basin Electric’s O-IRP statutory compliance, the Commission has noted it was making no finding on the Report’s merits.<sup>45</sup> In 2015 and 2016, the Commission merely closed the docket, noting, “the Commission is not making a finding that it endorses, approves, or has otherwise made a determination on the merits of the Basin filing or on the reliability of Basin’s system.”<sup>46</sup>

Based on the Commission’s past practice, the Commission at most determines whether the Report is complete. Critically, it makes no findings on the merits of the Report or the reliability of Basin Electric’s system. Environmental Intervenors concede the Report meets the

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<sup>42</sup> Mot. to Compel at 5.

<sup>43</sup> See Minn. R. Civ. P. 26.02.

<sup>44</sup> Docket No. ET-6125/RP-14-534, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 5 (Dec. 16, 2014); Docket No. ET-6125/RP-13-562, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Sept. 26, 2013); Docket No. E-6125/RP-12-723 Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Dec. 19, 2012).

<sup>45</sup> Docket No. ET-6125/RP-13-562, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Sept. 26, 2013); Docket No. E-6125/RP-12-723, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 2 (Dec. 19, 2012).

<sup>46</sup> In the Matter of Basin Elec.’s Optional Integrated Res. Plan Compliance, Docket No. ET6125/RP-16-565, Notice Closing Docket (Dec. 19, 2016); In the Matter of Basin Elec.’s Optional Integrated Res. Plan Compliance, Docket No. ET6125/RP-15-643, Notice Closing Docket (Sept. 8, 2015).

minimum requirements for completeness. As Environmental Intervenors note, Basin Electric's Report provides a 15-year demand projection and "discusses Basin's future resource options."<sup>47</sup>

Environmental Intervenors reject this understanding of the regulatory history, noting that on several occasions the Commission reserved its ability to seek additional information from Basin Electric with respect to future Reports.<sup>48</sup> In so doing, however, the Commission did not address the permissible scope of future IRs. It is axiomatic that any IRs must be relevant to the issues before the decision maker. Because the IRs are not relevant to the issues before the PUC, the Commission should deny Environmental Intervenors' Motion to Compel.

**C. Contrary to the Argument Made by the Environmental Intervenors, the O-IRP Report Statute Does Not Require Basin Electric to Meet Requirements of the Traditional IRP Statute and Regulations.**

- (1) The O-IRP Report Statute Does Not Incorporate the Requirements of the Traditional IRP Statute.

Environmental Intervenors place heavy emphasis on the provision in the O-IRP Report Statute providing that "[t]he commission may take whatever action in response to a report under [the O-IRP Report Statute] that it could take with respect to a report by a cooperative under subdivision 2."<sup>49</sup> Rather than expand the scope of Commission's jurisdiction in handling an O-IRP, this language more accurately, and in context, serves as a reference to the advisory nature of an IRP for a cooperative and the Commission's inherent jurisdictional limitations.

From this language, Environmental Intervenors argue the O-IRP Report Statute incorporates the numerous provisions of the Traditional IRP Statute requiring a cooperative to file a resource plan consistent with rules adopted by the Commission.<sup>50</sup> For example, they

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<sup>47</sup> Mot. to Compel at 2.

<sup>48</sup> Mot. to Compel at 11-12.

<sup>49</sup> Mot. to Compel at 5 (quoting Minn. Stat. § 216B.2422, subd. 2b).

<sup>50</sup> Mot. to Compel at 5 (quoting Minn. Stat. § 216B.2422, subd. 2).

suggest the O-IRP Report Statute incorporates the language in the Traditional IRP Statute requiring a utility to “file a resource plan with the commission.”<sup>51</sup> Environmental Intervenors also contend the O-IRP Resource Statute incorporates the provision in the Traditional O-IRP Statute requiring the Commission to “approve, reject, or modify the plan.”<sup>52</sup>

Environmental Intervenors’ position that the O-IRP Report Statute incorporates all these provisions of the Traditional IRP Statute conflicts with the language of the O-IRP Report Statute and Commission practice. The O-IRP Report Statute provides for the filing of a “report,” not a “resource plan.”<sup>53</sup> This distinction cannot be reconciled with Environmental Intervenors’ suggestion that the O-IRP Report Statute incorporates the Traditional IRP Statute’s requirement to file a resource plan. Additionally, the Commission has never sought to “approve, reject, or modify,” an O-IRP Report. At most, the Commission has determined whether the Report is complete.<sup>54</sup> More recently, the Commission has expressly stated it was “*not* making a finding that it endorses, approves, or has otherwise made a determination on the merits of the Basin filing or on the reliability of Basin’s system.”<sup>55</sup> Thus, the Commission does not believe the O-IRP Report Statute incorporates the requirement that it approve, reject, or modify the Report. The Commission’s past handling of the Reports acknowledges that Basin Electric has met the limited requirements of the O-IRP Report Statute.

The incorporation of the requirements of the Traditional IRP Statute into the O-IRP Statute would also defeat the O-IRP Statute’s purpose. As detailed in Basin Electric’s Responses to Environmental Intervenors’ First Set of Information Requests, the purpose of the O-IRP

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<sup>51</sup> Mot. to Compel at 5 (quoting Minn. Stat. § 216B.2422, subd. 2).

<sup>52</sup> Mot. to Compel at 5 (quoting Minn. Stat. § 216B.2422, subd. 2(b)).

<sup>53</sup> Minn. Stat. § 216B.2422, subd. 2b.

<sup>54</sup> Docket No. ET-6125/RP-14-534, Order Acknowledging Receipt of Compliance Rpt. and Closing Docket at 5 (Dec. 16, 2014).

<sup>55</sup> Docket No. ET6125/RP-16-565, Notice Closing Docket (Dec. 19, 2016) (emphasis added); *see also* Docket No. ET6125/RP-15-643, Notice Closing Docket (Sept. 8, 2015).

Report Statute was to save cooperatives with limited presence in Minnesota the time and cost of submitting a traditional IRP.<sup>56</sup> Incorporating the requirements of the Traditional IRP Statute into the O-IRP Report Statute would preclude Basin Electric from avoiding the time and cost of complying with the Traditional IRP Statute. The Commission should reject Environmental Intervenors' attempt to incorporate the numerous and burdensome requirements of the Traditional IRP Statute into the streamlined O-IRP Report.

(2) The Traditional IRP Rules Are Inapplicable to O-IRP Reports.

Environmental Intervenors also argue the Commission's Traditional IRP Rules apply to O-IRP Reports.<sup>57</sup> The Traditional IRP Rules precludes Environmental Intervenors' argument. Those rules apply to "an electric utility with more than 1,000 retail customers in Minnesota."<sup>58</sup> Basin Electric has no retail customers in Minnesota.<sup>59</sup> Consequently, the Traditional IRP Rules are inapplicable. Moreover, Basin Electric is not an "electric utility" as defined by the Traditional IRP Rules: "'Electric utility' means a person, corporation, or other legal entity engaged in generating, transmitting, *and* selling at retail electricity in Minnesota *and whose retail rates are regulated by the commission.*"<sup>60</sup> Because Basin Electric sells no electricity at retail and is not rate-regulated, the Cooperative falls outside the definition "electric utility" under the Traditional IRP Rules, and the Traditional IRP Rules are inapplicable.<sup>61</sup> During Basin Electric's 2012 "O-IRP proceeding, the Commission . . . verbally agreed that because the O-IRP legislation states it is an optional filing that can be made 'in lieu of a resource plan,' the O-IRP should not be considered a resource plan and therefore the other statutes and rules applying

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<sup>56</sup> Basin Elec.'s Resp. to 1st Set of Info. Requests at 8-10.

<sup>57</sup> Mot. to Compel at 6 (quoting Minn. R. 7843.0200, .0500).

<sup>58</sup> Minn. R. 7843.0200, subp. 2.

<sup>59</sup> Minn. R. 7843.0200, subp. 2.

<sup>60</sup> Minn. R. 7843.0100, subp. 5 (emphases added).

<sup>61</sup> Minn. R. 7843.0100, subp. 5, .0200, subp. 2.

to resource plans would not automatically apply.”<sup>62</sup> In sum, the Traditional IRP Rules are inapplicable to Basin Electric’s Report and do not justify broad discovery.

**D. Contrary to the Argument Made by Environmental Intervenors, the Legislative History of the O-IRP Report Statute Does Not Support Broad Discovery.**

Environmental Intervenors argue that the legislative history supports broad discovery.<sup>63</sup> They seize on correspondence from the Assistant Director of Government Affairs at the Minnesota Department of Commerce regarding the proposed legislation.<sup>64</sup> That correspondence states that the proposal “balances an alternative method of reporting for Dairyland and Basin . . . while maintaining adequate protections for the state and Minnesota consumers from the affects of potential reliability issues and/or increased electric costs.”<sup>65</sup> Environmental Intervenors claim this statement demonstrates that the Statute would “maintain[] Commission oversight into the issues of reliability, resource adequacy, and costs.”<sup>66</sup>

Environmental Intervenors read too much into this one statement. First, Basin Electric maintains that resort to legislative history is unnecessary because the Statute is unambiguous.<sup>67</sup> Second, the O-IRP Report Statute was not finalized when this correspondence was sent. The proposed legislation was significantly amended before final enactment.<sup>68</sup> Indeed, the suggestions of the Department that might arguably expand the scope of the Report as set forth in the e-mailed proposal were not adopted.<sup>69</sup> Instead, further limiting provisions were enacted into

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<sup>62</sup> In the Matter of Basin Elec. Power Coop.’s Optional Integrated Res. Plan Compliance Rpt., Docket No. ET6125/RP-13-562, Staff Briefing Papers at 6 n.3 (Aug. 27, 2013).

<sup>63</sup> Mot. to Compel at 6-7.

<sup>64</sup> Basin Elec.’s Resp. to 1st Set of Info. Requests Ex. C.

<sup>65</sup> Basin Elec.’s Resp. to 1st Set of Info. Requests Ex. C.

<sup>66</sup> Mot. to Compel at 7.

<sup>67</sup> Basin Elec.’s Resp. to 1st Set of Info. Requests 5-6.

<sup>68</sup> For example, the correspondence states “[t]he legislation would become effective after a final Commission order is issued in any proceedings currently pending under MINN. STAT. §216B.2422.” Basin Elec.’s Resp. to 1st Set of Info. Requests Ex. C. The final legislation became effective the day after enactment. 2012 Minn. Laws ch. 268.

<sup>69</sup> Compare Basin Elec.’s Resp. to 1st Set of Info. Requests Ex. C, with Minn. Stat. § 216B.2422, subd. 2b.

the law. For example, the possibility of perfunctory compliance by merely filing pre-existing reports to other jurisdictions or entities was expressly added.<sup>70</sup> In addition, clear declarations that aggregate data would be sufficient in the Report and that individual distribution cooperative data would not be required further limited the scope of the Report and the Commission's jurisdiction.<sup>71</sup> Therefore, upon closer examination, statements regarding an earlier version of the legislation, rather than shed light on the purpose of the adopted legislation as urged by the Environmental Intervenors, highlight the narrowing of the nature and scope of an O-IRP Report during the course of the legislation's history.

**E. Even if the Commission Had Jurisdiction Over Matters Beyond the Completeness of the Report, the Motion to Compel Should Be Denied Because the IRs Seek More Than Aggregate Data.**

Because the IRs request data about individual generation resources, power purchase agreements (PPAs), and responses to requests for proposal (RFPs), they seek much more than aggregate data and are thus improper under the Statute. Environmental Intervenors reject this interpretation of the Statute stating that “the statutory reference to ‘aggregate data’ is clearly referencing aggregate load data from member cooperatives, not aggregate data about generating resources.”<sup>72</sup> Environmental Intervenors' interpretation is inconsistent with the Statute's plain meaning.

The Statute states that the data provided in an O-IRP Report “may be aggregate data and need not be separately reported for individual distribution cooperative members of the cooperative.”<sup>73</sup> Environmental Intervenors' interpretation of the Statute would make the language authorizing the provision of “aggregate data” superfluous. If the Statute merely

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<sup>70</sup> Basin Elec.'s Resp. to 1st Set of Info. Requests Ex. C, *with* Minn. Stat. § 216B.2422, subd. 2b.

<sup>71</sup> Basin Elec.'s Resp. to 1st Set of Info. Requests Ex. C, *with* Minn. Stat. § 216B.2422, subd. 2b.

<sup>72</sup> Mot. to Compel at 13.

<sup>73</sup> Minn. Stat. § 216B.2422, subd. 2b.

authorized cooperatives to rely on aggregate data from members, the Statute would have stated only that the Report's data "need not be separately reported for individual distribution cooperative members of the cooperative." But the Statute also states more generally that data in the Report "may be aggregate data." As the Legislature did in 2012, the Commission should reject an interpretation that seeks to expand rather than contract the scope of information required by the Statute.<sup>74</sup>

The Statute allows Basin Electric to provide aggregate data regarding both demand and generation resources.<sup>75</sup> Environmental Intervenors' request detailed information regarding individual coal-fired generating facilities, such as planned and recent capital additions.<sup>76</sup> Likewise, the IRs request information about individual PPAs.<sup>77</sup> These individualized requests ask for information the Statute does not require Basin Electric to produce. Thus, Environmental Intervenors' IRs are still too broad, and the Commission should deny their Motion to Compel.

### **III. CONCLUSION**

The Commission should deny the Motion to Compel. The Commission lacks jurisdiction to require Basin Electric to respond to Environmental Intervenors' expansive IRs. The IRs are also unreasonable because they are irrelevant to the Commission's inquiry under the O-IRP Report Statute and there is no dispute about the completeness of Basin Electric's O-IRP Report.

Basin Electric also respectfully urges that the Commission decline the request by the Environmental Intervenors to preserve its broad authority to conduct discovery in future O-IRP

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<sup>74</sup> *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999) (stating that "[a] statute should be interpreted to give effect to all of its provisions, and "no word, phrase, or sentence should be deemed superfluous, void, or insignificant.").

<sup>75</sup> Minn. Stat. §216B.2422, subd. 2b.

<sup>76</sup> Data Request 1, SCFEMCEA-1.

<sup>77</sup> Data Requests 2, 4, 6, SCFEMCEA-2, -4, -6.

proceedings<sup>78</sup> since such discovery exceeds the Commission's jurisdiction and is generally unreasonable and unnecessary in view of the requirements of the O-IRP Report Statute.

Dated: November 15, 2019

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<sup>78</sup> Mot. to Compel at 22.