

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: January 16, 2014 **Agenda Item # 5

Companies: Minnesota Power (“MP” or the “Company”)

Docket Nos. E015/M-12-920
In the Matter of Minnesota Power’s Petition for approval of its Boswell Energy Center Unit 4 Environmental Retrofit Project and Boswell 4 Environmental Improvement Rider

Issue(s): Should the Commission grant the Environmental Intervenors’ Request for Reconsideration?

Staff: Clark Kaml.....651-201-2246
Janet Gonzalez651-201-2231

Relevant Documents

Minnesota Power Boswell Energy Center Unit 4
Environmental Improvement Plan August 31, 2012
Minnesota Pollution Control Agency (MPCA) Review of
Minnesota Power’s Boswell Unit 4 Environmental Improvement Plan March 1, 2013
MP petition for approval of an emissions reduction rider March 7, 2013
Commission Order Approving Boswell Energy Center Unit 4 Retrofit
Project and Authorizing Rider Recovery November 5, 2013
Izaak Walton League of American – Midwest Office, Fresh Energy,
Sierra Club, and Minnesota Center for Environmental Advocacy’s
(Environmental Intervenors) Request for Reconsideration November 25, 2013
Minnesota Power’s Answer to Request for Reconsideration December 5, 2013
Large Power Intervenors’ (LPI) Answer to Request for Reconsideration December 5, 2013

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Statement of the Issues

Should the Commission grant the Environmental Intervenors' Request for Reconsideration?

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 Environmental Intervenors' petition, the request would be considered denied as of January 24, 2014. The Commission may also take specific action to deny the petition.

If the Commission takes up a party's request for reconsideration, the Commission can: (1) reconsider, and (a) affirm, (b) modify or (c) reverse its initial decision, or (2) toll the time period to allow additional time for reconsideration, or (3) deny the petition for reconsideration and thereby affirm the initial decision. The Commission may also reconsider its Order on its own motion.

Background

On August 31, 2012, Minnesota Power filed a mercury emission reduction plan (the "Project") for its Boswell Energy Center Unit 4 electric generating station (BEC4) under Minn. Stat. §216B.6851, referred to herein as the Minnesota Mercury Emission Reduction Act (MERA). MP proposed to retrofit BEC4 to reduce multiple pollutants, and to comply with MERA and with the federal Environmental Protection Agency's Mercury and Air Toxics Rule (MATS).

On March 1, 2013, the Minnesota Pollution Control Agency (MPCA) issued its environmental assessment of MP's proposed mercury emissions reduction plan as required by Minn. Stat. § 216B.684 (MPCA Report).

On March 7, 2013, MP filed its petition for approval of an emissions reduction rider to recover the costs of the Project under Minn. Stat. §216B.683.

On November 5, 2013, following written comments and oral argument, the Commission issued its Order Approving Boswell Energy Center Unit 4 Retrofit Project and Authorizing Rider Recovery.

On November 25, 2013, a request for reconsideration was filed by the Izaak Walton League of America-Midwest Office, Fresh Energy, Sierra Club, and Minnesota Center for Environmental Advocacy (the Environmental Intervenors).

On December 5, 2013, Minnesota Power and the Large Power Intervenors each filed answers to the request.

The Department of Commerce did not file an answer to the Request for Reconsideration.

Party Comments

Environmental Intervenors' Request for Reconsideration

The Environmental Intervenors' primary argument is that the Commission did not have an adequate record concerning the natural gas replacement options for the BEC4 that Minnesota Power considered, violating Minn. Stat. §216B.6851. The Environmental Intervenors specifically stated that the Order approving Minnesota Power's proposed Boswell Energy Center Unit 4 Retrofit Project, depends upon a legally deficient report prepared by the Minnesota Pollution Control Agency pursuant to Minn. Stat. § 216B.684.

The Environmental Intervenors noted that Minn. Stat. §216B.684(3) requires the MPCA to analyze "the technical feasibility and cost-effectiveness of technologies proposed or considered" by Minnesota Power. It argued that:

The MPCA failed to consider "the environmental and public health benefits" and "the technical feasibility and cost-effectiveness" of any of the natural gas alternatives proposed or considered in the Petition. Thus, the MPCA Report does not comply with Minn. Stat. § 216B.684.

Because the Commission may not approve Minnesota Power's BEC4 Retrofit Project absent a legally sufficient MPCA Report, the Commission's November 5, 2013 Order is itself in violation of law and therefore arbitrary and capricious.

The Environmental Intervenors also argued that there would be substantially greater pollution reductions from a natural gas alternative to the BEC4 Retrofit. The Environmental Intervenors provided new information in the form of an analysis by a consultant, Dr. Ranajit Sahu. His analysis demonstrated that the quantified benefits to society would range from \$25 to \$78 million per year for PM, SO₂, and mercury. For CO₂, over the period of 2016 to 2040, a natural gas alternative would result in cumulative avoided costs of \$6 billion.

The Environmental Intervenors requested that the Commission:

Vacate its November 5, 2013, Order;

Stay this proceeding pending completion by the MPCA of a report in full compliance with Minn. Stat. § 216B.684(2) and (3).

Minnesota Power Reply

Minnesota Power noted that the Environmental Intervenors rely almost exclusively on the assertion that Minnesota Pollution Control Agency issued a report that did not analyze Minnesota Power's resource planning analysis included as an appendix to its August 31, 2012 Boswell 4 Petition.

MP argued that the Environmental Intervenors' assertion is based on a faulty reading of the Mercury Act. It argued that its mercury-emission reduction plan, and an alternative plan were considered by the MPCA in its report and were properly addressed by the Commission in its Order.

MP stated that its alternative mercury-emissions reduction plan was not a natural gas resource alternative, but, consistent with the Mercury Act, a plan "designed to come as near as technically possible to achieving the goal established under subdivision 3 without imposing excessive costs on the utility's customers." This was an alternative technology plan that could achieve less than the 90 percent mercury reduction goal the Legislature established for utilities subject to the Mercury Act by not fully utilizing the same retrofit technology.

MP argued that the Commission's consideration of two natural gas replacement options for Boswell Unit 4 was in accordance with the general evaluation under the Integrated Resource Plan statute, including general considerations under the Mercury Act and other environmental statutes, as well as the overall impact on Minnesota Power's ratepayers. To allow a full discussion on Boswell 4, the Commission also considered Minnesota Power's 2013 Integrated Resource Plan at the same agenda hearing. The Commission's evaluation of the mercury reduction plan for Boswell Unit 4 was not limited to the MPCA's technical feasibility of emission reduction technologies, but included Minnesota Power's resource planning sensitivity analysis and findings "that the proposed retrofit tended to cost less than the replacement options under a variety of future conditions."

MP stated that the Environmental Intervenors' request would merely proliferate calls to hypothesize and run other scenarios beyond what the statute requires. Based on the record in this case, that is not warranted.

MP argued that the Commission has repeatedly denied petitions for reconsideration where the petitioner has not demonstrated the Commission's decision was incorrect. In its April 19, 1991 Order in Docket No. E-132, 299/SA-90-1077, *In the Matter of a Petition by the City of Rochester, Minnesota, for an Order Establishing Petitioner's Right to Provide Electric Service to Certain Street Lights Constructed and Owned by Petitioner and Located in the City of Rochester Adjacent to Highway 63 North, in the Service Territory of People's Cooperative Power Association*, the Commission stated:

The Commission finds that the City's petition raises no new issues, offers no new evidence, and identifies no issues requiring further consideration. The petition restates the City's original arguments, which the Commission has duly reexamined and continues to reject for the reasons set forth in the March 15 Order.

Similarly, in its January 28, 2009 Order denying Southern Minnesota Municipal Power Agency's (SMMPA) request for reconsideration in Docket No. E002/M-07-1601, the Commission stated that the petitioners' request:

[D]oes not raise new issues, does not point to new and relevant evidence, does not expose errors or ambiguities in the original Orders, and does not otherwise persuade the Commission that it should rethink its original decision.

MP argued that the Environmental Intervenors' request merely restates or incorporates arguments already presented in this proceeding. The request fails to establish any legal error in the Commission's Order and it neither raises new issues or facts, nor warrants additional consideration.

MP stated that the its Boswell 4 Petition met all applicable requirements, the MPCA did exactly what was required of the agency under the Mercury Act and the Commission made a decision with a fully developed record. Minnesota Power requested that the Commission deny Petitioners' Request for Reconsideration.

Large Power Intervenors Answer

The Large Power Intervenors noted that in reviewing requests for reconsideration, the Commission often looks for new issues raised, new evidence introduced, and errors or ambiguities exposed in the order.

The LPI argued that the Environmental Intervenors raise no new issues or legal arguments to support its request. Because the Commission's decision in that Approval Order is consistent with the facts, the law and the public interest, it should not be reconsidered.

The LPI stated that the Environmental Intervenors' essential argument for reconsideration is based on a flawed interpretation of the Mercury Emission Reduction Act and the argument that the MPCA's analysis of the BEC4 Mercury Reduction Plan was legally deficient. The Environmental Intervenors conflate what is required to be included in the utility's mercury reduction plan under section 216B.6851, subd. 3 and MPCA's review of that plan under section 216B.684 with the utility's analysis of alternatives to that plan under section 216B.6851, subd. 4 and the utility's separate reporting requirements under section 216B.6851, subd. 5.

Subdivision 5 directs the utility to provide analysis of potential retrofit or repowering options in annual filings and consult with the Department. It does not direct MPCA to review wholesale alternatives to the utility's mercury reduction plan as part of its review under §216B.684.

Instead the MPCA must "evaluate a utility's mercury emissions-reduction plans, "assess whether it meets the statutory requirements," and:

evaluate the environmental and public health benefits of each option proposed or considered by the utility, including benefits associated with reductions in pollutants other than mercury, (3) assess the technical feasibility and cost-effectiveness of technologies proposed or considered by the utility for achieving mercury emissions reduction, and (4) advise the commission of the appropriateness of the utility's plan.

The LPI stated that the Approval Order follows the statutes closely, addresses the Environmental Intervenors assertion that MPCA had not fulfilled its obligations, and then proceeds to focus on the statutorily obligated parties' fulfillment thereof.

The LPI argued that the Order directly addresses the Environmental Intervenors's claim that Minnesota Power and the MPCA did not give adequate consideration to natural gas replacement alternatives. The LPI stated that the Commission's analysis of whether plan alternatives were adequately evaluated was kept somewhat separate from its decision to approve the BEC4 Mercury Reduction Plan.

LPI argued that:

The questions of statutory interpretation and obligations had been exhaustively discussed on the record in this docket.

Environmental Intervenors are raising a flawed legal argument for reconsideration that has been directly and adequately addressed in the record.

The MPCA's analysis was sufficient under MERA and the Commission's reliance thereon and Approval Order is consistent with Minnesota law.

The LPI noted that additional analysis will result in further delays, which will postpone the environmental and public health benefits of the BEC4 Project and could further exacerbate the already escalating costs of delay.

The LPI recommended that the Commission reject the Environmental Intervenors' Request for Reconsideration.

Staff Comment

The question for the Commission is whether it thinks there is reason to change its earlier decision reflected in the November 5, 2013 Order. Staff agrees that the arguments raised by the Environmental Intervenors have already been addressed by the Commission, and the Environmental Intervenors have not raised any new issues or legal arguments requiring further consideration. Their request is essentially a restatement of arguments previously made in this proceeding.

However, as noted above, the Environmental Intervenors have provided new information in the form of an analysis by a consultant, Dr. Ranajit Sahu. Questions for the Commission are whether to consider the new information at this time, and whether the new information would alter the Commission's decision.

Although the information is new, it focuses on the environmental and health benefits of the natural gas alternatives and claims that they were not fully evaluated in any of the documents of by any of the agencies or by MP. The November 5 Order specifically addressed the issue of natural gas options stating on page 6:

The Environmental Intervenors also argued that Minnesota Power and the MPCA did not give adequate consideration to natural gas replacement alternatives. However, Minnesota Power considered two natural gas replacement options: (1) building a new natural gas facility and (2) acquiring an ownership share in a larger natural gas facility.

Minnesota Power conducted a sensitivity analysis and found that the proposed retrofit tended to cost less than the replacement options under a variety of future conditions. The Department agreed that retiring Boswell 4 is not a cost-effective option. The Commission concludes that further analysis of natural gas options is not warranted at this time.

*Commission Options*¹

Some Commission options are:

- A. Grant the Environmental Intervenors' request for reconsideration and:
 - 1. Vacate the Commission's November 5, 2013, Order;
 - 2. Stay this proceeding pending completion by the MPCA of a report in full compliance with Minn. Stat. § 216B.684(2) and (3).
- B. Deny the Environmental Intervenors' request for reconsideration.
- C. Grant the Environmental Intervenors' request for the purpose of tolling the time period.

¹ Pursuant to Commission practice, only a Commissioner who voted on the prevailing side may make a motion for rehearing/reconsideration. At the September 25, 2013 agenda meeting, Commissioner Boyd moved to, among other things, approve the MP Petition with conditions. The motion passed 3-2. Commissioners O'Brien and Lange voted against the motion.