

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

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

In the Matter of Commission Consideration of  
Minnesota Power’s Compliance with Annual  
Safety, Reliability, and Service Quality  
Metrics for 2018.

DOCKET NO. E015/M-18-250

**COMMENTS OF THE OFFICE  
OF THE ATTORNEY GENERAL**

**INTRODUCTION**

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) respectfully submits the following Comments in response to the Notice of Comment Period issued by the Public Utilities Commission (“Commission”) on October 22, 2019. The purpose of these Comments is to explain that Minnesota Power (“Company”) should change its policy of requiring disconnected customers to pay their past due amounts in full prior to being reconnected and to ask the Commission to stay imposition of penalties for violations of the statutes requiring monthly and weekly reports on past due accounts and disconnections.

**BACKGROUND**

Both the OAG and the Energy Cents Coalition (“ECC”) raised concerns about Minnesota Power’s disconnection policies in the Company’s safety, reliability, and service-quality docket.<sup>1</sup> Specifically, ECC alleged that Minnesota Power required “full payment for past-due bills in order to restore service to disconnected customers,”<sup>2</sup> and noted significant disparities in the data that Minnesota Power was reporting for the number of disconnected customers that were

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<sup>1</sup> Docket No. E-015/M-18-250.

<sup>2</sup> ECC Comments at 5.

reconnected within 24 hours.<sup>3</sup> The OAG submitted Reply Comments that argued that Minnesota Power's policy regarding reconnections was a violation of Minnesota law that requires utilities to offer payment plans for customers in arrears that consider customers' financial circumstances, and joined ECC's request for an external audit of Minnesota Power's disconnection data and reporting.<sup>4</sup> Minnesota Power engaged Winthrop & Weinstine to perform such an audit, and filed its Regulatory Compliance Assessment-Report ("Report") on October 18, 2019.

The Report addressed, among other things, both the legality of Minnesota Power's reconnection policy and the accuracy and timeliness of its disconnection reporting. On the reconnection issue, the Report confirms Minnesota Power's practice of requiring full payment from disconnected customers prior to reconnecting them.<sup>5</sup> The Report notes that this practice is codified in its Commission-approved tariff, and further notes that Minnesota Statutes section 216B.098, subdivision 3, refers only to "continu[ing] service" and not to reconnection of service.<sup>6</sup> While the Report does not reach a conclusion on the legal question of whether the policy violates the statute, it does suggest that in order to change the policy, the Commission would also need to change the Company's tariff.<sup>7</sup>

With respect to the accuracy of disconnection and reconnection data, as well as the timeliness of the reporting, the Report identified multiple shortcomings. Specifically, the Report found that historically "MP lacked a consistent methodology or consistent definitions related to its recording (and therefore reporting) of disconnections and reconnections," and that this led to

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<sup>3</sup> ECC Comments at 6-7.

<sup>4</sup> OAG Reply Comments at 1-4.

<sup>5</sup> Report at 20. Throughout this docket, Minnesota Power does not appear to dispute the factual characterization of this practice.

<sup>6</sup> Report at 20.

<sup>7</sup> Report at 20-21.

inaccurate and inconsistent data being filed with the Commission.<sup>8</sup> The Report also indicates that “[i]t is undisputed that [Minnesota Power] failed to timely file multiple required monthly or weekly reports for much of 2017” as mandated by statute.<sup>9</sup> The Report goes on to indicate that it believes the Company has resolved these concerns by “creat[ing] a new position with direct responsibility for such timely filing.”<sup>10</sup>

## ANALYSIS

The Commission should take action to address two related but distinct concerns: First the Commission should amend the Company’s tariff to end Minnesota Power’s unlawful practice of requiring full payment prior to reconnecting disconnected customers. Second, the Commission should stay imposition of a penalty for Minnesota Power’s untimely and inaccurate filings in violation of Minnesota law.

### **I. THE COMMISSION SHOULD AMEND MINNESOTA POWER’S TARIFF AND REQUIRE IT TO RECONNECT CUSTOMERS AFTER ENTERING INTO A PAYMENT AGREEMENT.**

Minnesota Power’s practice of requiring full payment prior to reconnecting customers who have been disconnected for non-payment is in violation of Minnesota Statutes section 216b.098, subdivision 3, which provides:

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.

A blanket requirement that a customer pay its arrears in full cannot be said to be a “payment agreement.” Similarly, if the Company inflexibly applies this policy to all customers, then Minnesota Power is not “consider[ing]...customer[s’] financial circumstances and any

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<sup>8</sup> Report at 12-15.

<sup>9</sup> Report at 16-17.

<sup>10</sup> Report at 16.

extenuating circumstances,” as explicitly required by the statute. While the Report recites the Company’s argument that the use of the phrase “continue service” suggests the statute does not apply to reconnecting disconnected customers, that argument is misplaced. The phrase “continue service” appears in a sentence prohibiting the utility from requiring an additional service deposit as consideration for continuing service to a customer. That phrase in no way abrogates the requirement of the utility to offer a payment agreement or to consider the relevant circumstances of individual customers on a case-by-case basis. A payment plan that simply requires full payment prior to restoring service does not satisfy those requirements.

Even if the Commission is persuaded by Minnesota Power’s statutory analysis with respect to what is legally permissible, it should nevertheless implement the OAG’s proposed change because it is the right thing to do. The spirit of the law is to provide relief for households that are struggling so much with their day-to-day expenses that they have fallen behind on their utility bills. These households should not be left literally in the dark because of an inability to make full payment once they have agreed to a plan that will allow them to pay off those obligations over time.

Furthermore, the policy could, in some instances, be self-defeating. It is axiomatic that we live in a world that is increasingly dependent on technology. Unemployment and underemployment are two factors that could lead a household to fall behind on its utility bills. In the modern economy, job seekers rely on electric devices such as their computers and cellular phones to accomplish some of the most fundamental tasks in the job hunt: creating and updating resumes, submitting applications, searching for jobs, and taking phone calls to schedule interviews and respond to offers. If ratepayers do not have electricity, that could serve as a significant impediment to them taking the very steps needed to accomplish the ultimate goal of

Minnesota Power's policy: the eventual payment of past due accounts. Accordingly, even if the Commission finds that the Company's policy is permissible, it should amend Minnesota Power's tariff and allow for disconnected ratepayers to avail themselves of payment plans to make good on their past due bills.

**II. THE COMMISSION SHOULD STAY IMPOSITION OF A PENALTY FOR VIOLATIONS OF MINNESOTA POWER'S STATUTORY REPORTING OBLIGATIONS RELATED TO DISCONNECTIONS.**

Minnesota Power's data inaccuracies and untimely filings described above, and chronicled in more detail in the Report, constitute a violation of at least two statutory provisions that the Commission is charged with enforcing. First, Minnesota Statutes section 216B.091 requires utilities to provide monthly reports that include, among other things, information about the number and duration of disconnections for nonpayment. Second, Minnesota Statutes section 216B.906, subdivision 11 requires weekly reporting regarding utility heating customers that are disconnected for non-payment.

While the Report discusses the various underlying causes for the inaccurate and untimely submissions, it concludes that "[i]t is undisputed that [Minnesota Power] failed to timely file multiple required monthly or weekly reports for much of 2017."<sup>11</sup> As these reporting obligations are imposed by statute, it logically follows that failing to file them constitutes a violation of Minnesota law. The remedy provided for these violations is codified in Minnesota Statutes section 216B.57 as a "penalty of not less than \$100 nor more than \$1,000 for each violation."

The above being said, the Commission should issue a finding that Minnesota Power has violated its statutory reporting obligations, and should stay imposition of any penalties at this time. As the Report concluded that the changes and additions to the Company's personnel and

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<sup>11</sup> Report at 16.

processes has resolved the problem, imposition of a financial penalty should not be necessary to deter future violations. Additionally, by conditioning the stay upon the Company's continued compliance with statutory reporting obligations, the Commission could enhance the deterrent effect of any fine by putting Minnesota Power on notice that future violations could result in both penalties for those future violations and the previous violations found in the report. Furthermore, defining what constitutes an individual violation for the purpose of penalizing "each" violation could be a difficult and controversial process. If the problem has been corrected, the Commission could avoid having to resolve those issues unless and until future violations require that they be addressed.

### **CONCLUSION**

For the reasons discussed above, the Commission should protect ratepayers facing disconnection for nonpayment by requiring Minnesota Power to amend its tariff to allow disconnected ratepayers to restore service by entering a payment agreement with the Company,

and staying imposition of a penalty for violation of the Company's reporting requirements conditioned upon continued compliance in the future.

Dated: November 13, 2019

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

s/ Joseph C. Meyer

JOSEPH C. MEYER  
Assistant Attorney General  
Atty. Reg. No. 0396814

445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2131  
(651) 757-1433 (Voice)  
(651) 296-9663 (Fax)  
joseph.meyer@ag.state.mn.us

ATTORNEYS FOR OFFICE OF THE  
ATTORNEY GENERAL—RESIDENTIAL  
UTILITIES AND ANTITRUST DIVISION



**KEITH ELLISON**  
ATTORNEY GENERAL

# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

SUITE 1400  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2131  
TELEPHONE: (651) 296-7575

November 13, 2019

Mr. Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

**Re: *In the Matter of Commission Consideration of Minnesota Power's Compliance with Annual Safety, Reliability, and Service Quality Metrics for 2018.***  
**Docket No. E-015/M-18-250**

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find Comments of the Office of the Attorney General—Residential Utilities and Antitrust Division.

By copy of this letter all parties have been served. An affidavit of service is enclosed.

Sincerely,

s/ **Joseph C. Meyer**

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JOSEPH C. MEYER

Assistant Attorney General

(651) 757-1433 (Voice)

(651) 296-9663 (Fax)

joseph.meyer@ag.state.mn.us

Enclosures

cc: Service List



**AFFIDAVIT OF SERVICE**

**Re: *In the Matter of Commission Consideration of Minnesota Power’s Compliance with Annual Safety, Reliability, and Service Quality Metrics for 2018.***  
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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

I, JUDY SIGAL, hereby state that on the 13th day of November, 2019, I efiled with eDockets *Comments* of the Office of the Attorney General–Residential Utilities and Antitrust Division, and served the same upon all parties listed on the attached services list via electronic submission and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

*See Attached Service List*

*s/ Judy Sigal*  
JUDY SIGAL

Subscribed and sworn to before me  
this 13th day of November, 2019.

*s/ Patricia Jotblad*  
Notary Public  
My Commission expires: January 31, 2020.

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 55102198	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@allte.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 55102131	Electronic Service	Yes	OFF_SL_18-250_M-18-250
Susan	Romans	sromans@allte.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

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Ron	Elwood	relwood@mnlisap.org	Mid-Minnesota Legal Aid	2324 University Ave Ste 101 Saint Paul, MN 55114	Electronic Service	No	SPL_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 55102198	Electronic Service	No	SPL_SL_18-250_M-18-250
Lori	Hoyum	lhoyum@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	SPL_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	SPL_SL_18-250_M-18-250
Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W Farmington, MN 55024	Electronic Service	No	SPL_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	SPL_SL_18-250_M-18-250
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	SPL_SL_18-250_M-18-250
William	Phillips	wphillips@aarp.org	AARP	30 E. 7th St Suite 1200 St. Paul, MN 55101	Electronic Service	No	SPL_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 55102131	Electronic Service	Yes	SPL_SL_18-250_M-18-250

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Jenna	Warmuth	jwarmuth@mnpower.com	Minnesota Power	30 W Superior St  Duluth, MN 55802-2093	Electronic Service	No	SPL_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 55102147	Electronic Service	Yes	SPL_SL_18-250_M-18-250