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December 2, 2013

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VIA E-FILING

Burl W. Haar
Public Utilities Commission
121 7th Place East
Suite 350
St. Paul, MN 55101-2147

**Re: In the Matter of Minnesota Power's Application for Approval of its 2013-2027
Resource Plan
Docket No. E015/RP-13-53**

Dear Dr. Haar:

Enclosed please find the Large Power Intervenors' Petition for Reconsideration and Amendment in the above referenced docket.

If you have any questions, please contact me.

Very truly yours,

Stoel Rives LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka

APM:kap

Enclosures

cc: Service List
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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of Minnesota Power's
Application for Approval of its 2013-2027
Resource Plan

PUC Docket No. E015/RP-13-53

**PETITION FOR RECONSIDERATION
AND AMENDMENT**

The Large Power Intervenors ("LPI"), consisting of ArcelorMittal USA (Minorca Mine); UPM-Blandin Paper Company; Boise, Inc.; Enbridge Energy, Limited Partnership; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; NewPage Corporation; PolyMet Mining, Inc.; Sappi Cloquet, LLC; USG Interiors, LLC; United States Steel Corporation (Keewatin Taconite and Minntac Mine); and United Taconite, LLC; submit this petition for reconsideration and amendment regarding the Commission's order approving Minnesota Power's application for approval of its 2013-2027 integrated resource plan (the "Resource Plan").

I. INTRODUCTION

On November 12, 2013, the Minnesota Public Utilities Commission (the "Commission") issued its *Order Approving Resource Plan, Requiring Filings, and Setting Date for Next Resource Plan* (the "Resource Plan Order").¹ LPI objects to the Resource Plan Order's implication that LPI's comments were focused exclusively on assumptions relating to carbon dioxide. In fact, LPI's comment and reply comment provided detailed analyses of issues including reliability, ratepayer exposure to fuel price volatility, externality impacts, transmission costs, spot-market purchases, planning reserve margin requirements, and the statutory framework underpinning the Conservation Improvement Program ("CIP"). These issues reach far beyond assumptions relating to the potential future regulatory costs of carbon dioxide. That said, the focus of this petition for reconsideration and amendment is ordering paragraph 12 in the Resource Plan Order. There, the Commission appears to inappropriately assert its jurisdiction

¹ *In the Matter of Minnesota Power's 2013 – 2027 Integrated Resource Plan*, Docket No. E-015/RP-13-53, ORDER APPROVING RESOURCE PLAN, REQUIRING FILINGS, AND SETTING DATE FOR NEXT RESOURCE PLAN (November 12, 2013).

over utility customers. If LPI's interpretation of the Resource Plan Order is correct, then the Commission should strike paragraphs b. and c. of ordering paragraph 12, as set forth below. If, however, the thrust of the Commission's intent is to obtain an accurate resource planning forecast, then the Commission should amend ordering paragraph 12 to clarify in writing its intent.

II. ANALYSIS

A. Introduction

Under applicable law, "A petition for rehearing, amendment, vacation, reconsideration or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for amendment."² LPI files this request for reconsideration and, in the alternative, amendment, with respect to ordering paragraph 12 of the Resource Plan Order. There, the Commission directs specific action from both Minnesota Power and its ratepayers. Ordering paragraph 12 states:

For its next resource plan, Minnesota Power shall:

- a. Identify the amount of energy savings embedded in each year of its load forecast, in terms of total savings (kWh) and as a percentage of non-CIP-exempt retail sales;
- b. Identify the amount of system-wide energy savings, including aggregate data for CIP-exempt customers, embedded in each year of its load forecast;
- c. Evaluate additional conservation scenarios for its CIP-exempt and non-CIP-exempt customers, that would achieve greater energy savings beyond those in the base case; and
- d. Provide cost assumptions for achieving every 0.1 percent of savings above 1.5 percent of non-CIP-exempt retail sales.³

LPI asserts that the Commission should reconsider its Resource Plan Order and strike paragraphs 12.b. and 12.c. Alternatively, LPI requests that the Commission amend paragraphs 12.b. and 12.c. to reflect its intent, define the phrase "additional conservation scenarios," and clarify that

² MINN. R. 7829.0300 subp. 2

³ *Resource Plan Order*, ordering para. 12.

LPI's CIP-exempt members do not have a reporting obligation to Minnesota Power.

B. Ordering paragraphs 12.b. and 12.c. Should be Stricken from the Resource Plan Order

In ordering paragraphs 12.b. and 12.c., the Commission appears to be asserting jurisdiction over utility customers. LPI reads ordering paragraphs 12.b. and 12.c. to require its CIP-exempt members to report forecasted energy savings to Minnesota Power and work with the utility on energy conservation projects. To be clear, the Commission does not have jurisdiction to mandate such reporting by LPI's CIP-exempt members or to require those members to work with Minnesota Power on any energy conservation project.

The Supreme Court of Minnesota has long held that the Commission is a creature of statute, possessing only those powers expressly granted by the legislature. In 1985, the court noted:

[i]t is elementary that the Commission, being a creature of statute, has only those powers given to it by the legislature.” *Great Northern Railway Co. v. Public Service Comm’n*, 284 Minn. 217, 220, 169 N.W.2d 732, 735 (1969). 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.⁴

Furthermore, “Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency’s power beyond that which was contemplated by the legislative body.”⁵ When there is no ambiguous language to construe, courts will look to the “necessity and logic” of the situation.⁶ At the same time, the general rule of a reviewing court is to “resolve any doubt about the existence of an agency’s authority *against* the exercise of such authority.”⁷

⁴ *Peoples Natural Gas Co. v. Minn. Public Utilities Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985).

⁵ *Id.* (quoting *Waller v. Powers Department Store*, 343 N.W.2d 655, 657 (Minn. 1984)).

⁶ *Id.*

⁷ *In re Qwest’s Wholesale Service*, 702 N.W.2d 246, 258 (Minn. 2005) (emphasis added) (citing *In re Northern States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987)).

The Commission's powers are described generally in Chapter 216A of the Minnesota Statutes. There, the law groups the Commission's powers into four categories: (1) investigate utilities and issue appropriate orders "relating to the continuation, termination, or modification of all services and facilities"; (2) review the reasonableness of all tariffs and rates; (3) prescribe a uniform system of accounts; and (4) issue franchises, permits, and certificates of need.⁸ More specifically, the Commission has the authority to, *inter alia*, review applications to increase rates,⁹ requests to construct large energy facilities,¹⁰ and review resource plans.¹¹

But there are no statutory provisions granting the Commission authority over CIP-exempt customers - neither the initial legislation governing utilities' CIPs nor any subsequent amendments to the CIP-related statutes provide the Commission with jurisdiction over CIP-exempt customers. To the contrary, each utility's CIP (and petitions for exemption thereto) is reviewed by the Department of Commerce - Division of Energy Resources (the "Department") and approved by the Commissioner of Commerce (the "Commissioner").¹² The Commission's role, if any, is to serve as a reviewing body for any petition to modify or revoke the Commissioner's decision.¹³ Because the legislature granted express jurisdiction over CIP to the Commissioner and not to the Commission, the only remaining question is whether the Commission has implied authority to regulate CIP-exempt customers. LPI asserts that the Commission does not.

1. Historical Overview of CIP-Related Statutes

The Commission's authority over utility-sponsored conservation programs is outlined in Minn. Stat. § 216B.241, subd. 1a(a). In pertinent part, the statute reads:

⁸ MINN. STAT. § 216A.05 subd. 2.

⁹ MINN. STAT. § 216B.16

¹⁰ MINN. STAT. § 216B.243

¹¹ MINN. STAT. § 216B.2422.

¹² MINN. STAT. § 216B.241 subd. 1c.

¹³ MINN. STAT. § 216B.241 subd. 2(e).

216B.241 ENERGY CONSERVATION IMPROVEMENT.

Subd. 1a. **Investment, expenditure, and contribution; public utility.** (a) . . . Each public utility shall spend and invest for energy conservation improvements under this subd. and subd. 2 the following amounts:

(1) . . . ;

(2) for a utility that furnishes electric service, 1.5 percent of its gross operating revenues from service provided in the state;

(3) . . . ;

For purposes of this paragraph (a), “gross operating revenues” do not include revenues from large customer facilities exempted under paragraph (b).

Prior to 2007, that language stood alone and electric utilities met the state’s energy-savings requirement each year by spending 1.5% of their gross operating revenues on conservation programs. The statute did not require that the utilities’ annual expenditures result in a specific reduction in system load. In other words, prior to 2007, utilities were required to spend money on energy conservation programs but they were not required to meet a minimum level of energy savings based on dollars spent. Similarly, the Commissioner’s job was to confirm utility expenditures for energy conservation and not validate that those expenditures resulted in a minimum level of energy savings.

But in 2007, the legislature passed the Next Generation Energy Act (“NGEA”),¹⁴ which, in part, changed how the Commissioner assesses a utility’s energy savings. Specifically, Article 2, Sections 4 and 5 of the NGEA established an annual energy-savings goal for each utility equal to 1.5% of its annual retail energy sales. That language was codified at Minn. Stat. §§ 216B.2401 and 216B.241, subd. 1c(b):

¹⁴ 2007 Minn. Laws ch. 136.

216B.2401 ENERGY CONSERVATION POLICY GOAL.

It is the energy policy of the state of Minnesota to achieve energy savings equal to 1.5 percent of annual retail energy sales of electricity and natural gas directly through energy conservation improvement programs and rate design, and indirectly through energy codes and appliance standards, programs designed to transform the market or change consumer behavior, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

216B.241 ENERGY CONSERVATION IMPROVEMENT.

Subd. 1c. Energy-saving goals. . . .

(b) Each individual utility and association shall have an annual energy-savings goal equivalent to 1.5 percent of gross annual retail energy sales unless modified by the commissioner under paragraph (d). The savings goals must be calculated based on the most recent three-year weather normalized average.

The new energy savings goal changed the playing field by transforming the statutory scheme from a spending requirement into an overall energy savings goal that utilities could not necessarily meet simply by spending 1.5% of gross operating revenues on energy conservation programs. While each utility was still required to spend 1.5% of its gross operating revenues on energy conservation each year, the legislature recognized that utilities should be permitted to aggregate the energy savings that resulted from those direct expenditures with other energy efficiency efforts to achieve the new overall energy savings goal. To that end, section 216B.2401 provided that any portion of the 1.5% reduction that could not be achieved through direct expenditures under a utility's CIP could be made up "indirectly through energy codes and appliance standards, programs designed to transform the market or change consumer behavior, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation."¹⁵ Thus, statewide energy conservation that, prior to 2007, was measured solely through mandatory CIP expenditures was broadened in 2007 so that each utility could achieve a 1.5% reduction in annual

¹⁵ MINN. STAT. § 216B.2401.

retail energy sales through both CIP expenditures and other indirect efforts.

Importantly, however, both the definition of “gross operating revenues” under section 216B.241, subd. 1a(a) and the definition of “annual retail energy sales” under sections 216B.2401 and 216B.241, subd. 1c(b) explicitly exclude revenues from, and electricity sales to, large industrial customers that are exempted under section 216B.241, subd. 1a(b).¹⁶ Therefore, if a large industrial customer has petitioned the Commissioner to exempt it from CIP, and that petition has been granted, then that customer’s facility (1) is not considered to be an available resource for purposes of designing “utility-sponsored conservation programs” under any integrated resource plan and (2) is not measured for purposes of determining the utility’s performance with respect to the annual 1.5% energy savings goal. While it is true that, in 2007, utilities like Minnesota Power became responsible for achieving the new 1.5% energy savings goal in connection with their annual CIP expenditures, neither the measured load reductions nor the dollars spent were ever contemplated to include large industrial customers exempted under the statute. At the same time, exempted large industrial customers were (and remain) precluded from participating in any conservation improvement programs.¹⁷

2. The Commission Does Not Have Implied Authority over CIP-Exempt Customers Under H.F. 729

Article 12, Section 2 of H.F. 729 made the following revisions to section 216B.2401 (underline indicates new language; strikethrough indicates deletions):

216B.2401 ENERGY ~~CONSERVATION~~ SAVINGS POLICY GOAL.

The legislature finds that energy savings are an energy resource, and that cost-effective energy savings are preferred over all other energy resources. The legislature further finds that cost-effective energy savings should be procured systematically and

¹⁶ MINN. STAT. § 216B.241, subd. 1a(a) (last sentence) (“For purposes of this paragraph (a), ‘gross operating revenues’ do not include revenues from large customer facilities exempted under paragraph (b)”); § 216B.241, subd. 1(g) (“gross annual retail energy sales exclude: . . . (2) electric sales to a large customer facility whose electric utility has been exempted by the commissioner under subd. 1a, paragraph (b), with respect to electric sales made to the large customer facility”).

¹⁷ MINN. STAT. § 216B.241 subd. 2(d) (“A public utility may not spend for or invest in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b).”)

aggressively in order to reduce utility costs for businesses and residents, improve the competitiveness and profitability of businesses, create more energy-related jobs, reduce the economic burden of fuel imports, and reduce pollution and emissions that cause climate change. Therefore, it is the energy policy of the state of Minnesota to achieve annual energy savings equal to at least 1.5 percent of annual retail energy sales of electricity and natural gas directly through cost-effective energy conservation improvement programs and rate design, and indirectly through energy efficiency achieved by energy consumers without direct utility involvement, energy codes and appliance standards, programs designed to transform the market or change consumer behavior, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

In addition, Article 12, Section 3 of H.F. 729 amended Minn. Stat. § 216C.05, Subd. 2 as follows:

Subd. 2. **Energy policy goals.** It is the energy policy of the state of Minnesota that:

(1) annual energy savings equal to at least 1.5 percent of annual retail energy sales of electricity and natural gas be achieved through cost-effective energy efficiency;

~~(1)~~(2) the per capita use of fossil fuel as an energy input be reduced by 15 percent by the year 2015, through increased reliance on energy efficiency and renewable energy alternatives; and

~~(2)~~(3) 25 percent of the total energy used in the state be derived from renewable energy resources by the year 2025.

There is no language in the above amendments that provides the Commission with express or implied authority over CIP-exempt customers. As LPI stated in its reply comment and as the Deputy Commissioner of the Department stated in his final decision on Minnesota Power's 2014-2016 CIP,¹⁸ these revisions did not change the State's policy goal of achieving

¹⁸ *In the Matter of Minnesota Power's 2014-2016 Energy Conservation Improvement Plan*, Docket No. E-015/CIP 13-409, DECISION at 12-13 (October 10, 2013) ("Based on Staff's analysis and recommendations . . . the legislation in Article 12, Sec. 2 and 3 of HF 729, 4th Engrossment amending the energy policy goals in Minn. Stat. §§ 216B.2401 and 216C.05 does not override the specific statutory provisions requiring that annual energy savings goals be calculated as a percentage of gross annual retail energy sales, which exclude sales to CIP-exempt customers.").

energy savings equal to 1.5% of annual retail energy sales in any meaningful respect. The fact that the legislature retained the phrase “annual retail energy sales” – a phrase which explicitly excludes electricity sales to large industrial customers that have been exempted from the CIP program under § 216B.241, subd. 1a(b) – provides clear evidence that the Commissioner never had, and does not now have, jurisdiction over CIP-exempt customers. And if the Commissioner, who is charged by statute with reviewing utilities CIP filings, does not have jurisdiction over energy savings planning for CIP-exempt customers, it is unclear what need or logic would support implying Commission jurisdiction. Therefore, the Commission lacks implied authority to require in ordering paragraphs 12.b and 12.c. that Minnesota Power to account for energy conservation efforts of CIP-exempt customers.

3. Policy Considerations Weigh Against Implying Commission Jurisdiction Over CIP-Exempt Customers

Requiring Minnesota Power to take the energy conservation efforts of CIP-exempt customers into account during the resource planning process would place an undue burden on Minnesota Power and would place the Commission in an inappropriate regulatory position. Large and complex energy-intensive industries that compete in a global marketplace have every incentive to conserve energy. The CIP exemption provided for in Minn. Stat. § 216B.241, subdiv. 1a(b) recognizes this built-in incentive and the legislature further acknowledged it by excluding revenues from, and electricity sales to, CIP-exempt customers from the definitions of “gross operating revenues” and “annual retail energy sales.” To not only require Minnesota Power to take the energy conservation efforts of CIP-exempt customers into account based on the statutory changes in H.F. 729 (a decision which itself would run counter to the Department’s position on the issue), but further require CIP-exempt customers to work with Minnesota Power on “additional conservation scenarios” would effectively unravel the CIP exemption. The data requirements that the Commission sets forth in ordering paragraphs 12.b. and 12.c. effectively mandate Minnesota Power to collect and report data that should be afforded protection from disclosure to the public as highly confidential, proprietary, and exempt from production. Because the legislature has done nothing to revise the CIP exemption, the Commission’s mandate and Minnesota Power’s resulting data requests would be in clear violation of the statute.

Furthermore, as LPI has argued in multiple dockets before the Commission, energy

conservation for large and complex industrial processes like taconite mining and paper and pulp processing is fundamentally different than energy conservation for residential and commercial energy users. Increasing the energy efficiency of industrial processes includes rethinking manufacturing processes, investing in new, large industrial machinery, and evaluating transportation methods and supply chain investments. Such considerations vary from industry to industry and investments in energy efficiency projects by such companies are often lumpy - i.e., the investments are significant, but do not occur each and every year. For these reasons, and those set forth in preceding pages, the Commission should strike paragraphs 12.b. and 12.c.

4. Minnesota Power's Model Already Incorporates Energy Savings

Perhaps most importantly, Minnesota Power's load forecasting model already incorporates the information the Commission seeks. During the Commission's hearing, Chair Heydinger stated:

And all I think we were trying to get at in our questions to Minnesota Power is do what you can to work with your customers to get as accurate an idea of what they're planning and what they've accomplished as possible *so that the figures going forward are as supportable as possible. That's all we're looking for.*¹⁹

Appendix A of the Resource Plan contains Minnesota Power's 2012 Annual Electric Utility Forecast Report. This report is submitted annually to the Department, the purpose of which is to implement the forecasting, statistical, and informational reporting requirements of sections 216C.17 and 216C.18 of the Minnesota Statutes.²⁰ Included within this report are a number of different scenarios that reflect the uncertainty in sales and demand facing Minnesota Power over the next few years.²¹ The Resource Plan states "Unique to this year's report is the inclusion of several scenarios that reflect the uncertainty in sales and demand facing Minnesota Power over the next few years."²² Also included, as required by applicable law,²³ is a discussion of assumptions regarding the projected effect of existing and new conservation improvement

¹⁹ *In the Matter of Minnesota Power's 2013-2027 Integrated Resource Plan*, Docket No. E015/RP-13-53, TRANSCRIPT: ORAL ARGUMENTS - DELIBERATIONS, 57:17-24. (September 25, 2013) (hereinafter "Commission Hearing Transcript") (emphasis added).

²⁰ MINN. R. 7610.0110.

²¹ *Resource Plan*, App. A. at 1.

²² *Id.*

²³ MINN. R. 7610.0320 subp. 4.

programs.²⁴ Furthermore, Minnesota Power utilizes an autoregressive modeling process in its forecast which inherently biases future predictions by relying on the most recent past.²⁵ Given the myriad scenarios covered by Minnesota Power’s forecast, it is difficult to understand what need is supported by ordering paragraphs 12.b. and 12.c. in the Resource Plan Order. To be sure, Minnesota Power’s forecast remains “as supportable as possible.”

C. Paragraphs 12.b. and 12.c. Should be Amended

In the event the Commission disagrees with LPI’s assertion that ordering paragraphs 12.b and 12.c in the Resource Plan Order should be stricken, it should clarify and amend those paragraphs consistent with its apparent intent and State law. Currently, the Resource Plan Order states in pertinent part that:

For its next resource plan, Minnesota Power shall:

...

- b. Identify the amount of system-wide energy savings, including aggregate data for CIP-exempt customers, embedded in each year of its load forecast;
- c. Evaluate additional conservation scenarios for its CIP-exempt and non-CIP-exempt customers, that would achieve greater energy savings beyond those in the base case; and...²⁶

A couple of simple edits are necessary to clarify the Commission’s apparent intent in ordering paragraph 12.b. The Commission should clarify that the intent of ordering paragraph 12.b. is to ensure an accurate forecast. To be clear, LPI agrees with that objective. LPI set forth its objection during the hearing- i.e., to avoid any obligation on the part of LPI’s CIP-exempt members to submit a CIP report that the legislature clearly stated would no longer be necessary. Section 216B.241 of the Minnesota Statutes specifically states that “[a] large customer facility that is, under an order from the commissioner, exempt from the investment and expenditure requirements of paragraph (a) as of December 31, 2010, *is not required to submit a report to retain its exempt status, except as otherwise provided in this paragraph with respect to*

²⁴ *Resource Plan*, App. A at 68-69.

²⁵ *Resource Plan*, App. A at 9. Because Minnesota Power utilizes monthly data, the predictions are even more near term when compared to utilizing annual data.

²⁶ *Resource Plan Order*, ordering para. 12.

ownership changes.”²⁷ A majority of LPI’s CIP-exempt members fit within this statutory qualification. Counsel for LPI raised this issue at the hearing, and it appears the Commission seeks an accurate forecast, not a report. The transcript provides as follows:

MR. MORATZKA: ... So to then have a report under some other reason that’s not required under the CIP statute, it’s just to me – I don’t see how that would be appropriate under the existing law. And so I would –

CHAIR HEYDINGER: Mr. Moratzka, our purpose is something different, I think. It’s not just to add reporting requirements to the company. The question is what can the companies – what can the customers and Minnesota Power do in tandem to help us have a – and them, have a better idea of what the energy savings have been through energy efficiency and *how that might play out as we look to what the resources are that will be needed going forward.*²⁸

Here again, the focus of Chair Heydinger’s comments appeared to be on Minnesota Power’s forecasted need. As noted above, LPI believes the information requested in ordering paragraph 12.b. is already built into Minnesota Power’s forecast. But perhaps a verification from Minnesota Power would provide the comfort the Commission seeks in ensuring an accurate forecast for resource planning purposes. To this end, the Commission could easily make this clarification by amending ordering paragraph 12.b. as follows:

b. ~~Identify~~ Verify that the amount of system-wide energy savings, including aggregate data for CIP-exempt customers, is embedded in each year of its load forecast;

With respect to ordering paragraph 12.c., amendments are necessary to explain the Commission’s intent and comply with existing law. First, the Commission should clarify what it means by directing Minnesota Power to “evaluate additional conservation scenarios” in ordering paragraph 12.c. LPI understands that the Commission was deliberately vague. Commissioner O’Brien remarked that “There is value in opaque language. You know, we – we haven’t defined what a conservation scenario is, and so if we want to be in a dialogue, they can kind of decide amongst themselves what that means, as far as I’m concerned. But if it’s a good idea for its non-

²⁷ MINN. STAT. § 216B.241 subd. 1a(b) (emphasis added).

²⁸ *Commission Hearing Transcript*, 56:1-15 (emphasis added).

opt-out customers, it's a good idea for its opt out customers.”²⁹ Commissioner Lange appeared to direct parties to “think creatively.”³⁰ What is not clear is whether the Commission is focused on energy conservation, energy efficiency, or some other metric.³¹ LPI recommends using the definition of “energy conservation improvement” in section 216B.241 of the Minnesota Statutes in order to encompass energy conservation and energy efficiency.

Furthermore, and for the reasons explained in detail above, the Commission lacks statutory authority to direct CIP-exempt customers to work with Minnesota Power on conservation programs. By statute, CIP-exempt customers are responsible for planning, financing, and implementing their own energy conservation and energy efficiency efforts.³² There is simply no basis for the Commission to conclude that it has the authority to direct CIP-exempt customers to work with a utility for the purpose of energy conservation and efficiency. As noted by Commissioner Wergin, the Resource Plan Order’s language amounts to “making an end run around the statute.”³³ LPI recommends deleting any reference to CIP-exempt customers in ordering paragraph 12.c.

The overarching concern during deliberations appeared to be to encourage a dialogue. As counsel for LPI noted, this dialogue is taking place under direction of the Department of Commerce consistent with the 2013 Solar Energy Jobs Act.³⁴ The particular provision requires the Department to work with stakeholders to, *inter alia*, clarify statewide energy savings policies and maximize cost-effective energy savings.³⁵ The Department must issue a report by January 15, 2014, detailing this effort.³⁶ Should the Commission believe utility-customer-specific dialogue is necessary, the Commission could accomplish that objective in a re-written version of ordering paragraph 12.c. To account for this and edits referenced above, LPI suggests the following revisions:

²⁹ *Commission Hearing Transcript*, 115:13-19.

³⁰ *Commission Hearing Transcript*, 111:1-11.

³¹ “Energy conservation” and “energy efficiency” are defined terms in section 216B.241 of the Minnesota Statutes.

³² Minn. Stat. § 216B.241 subd. 1a(b).

³³ *Commission Hearing Transcript*, 116:10-11.

³⁴ H.F. 729, Article 12, Sec. 8.

³⁵ *Id.*

³⁶ *Id.*

c. Evaluate additional energy conservation improvement scenarios ~~for its CIP-exempt~~ and by engaging with non-CIP-exempt customers, that would in order to explore achieving greater energy savings beyond those in the base case while remaining sensitive to cost considerations; and...

III. CONCLUSION

LPI greatly appreciates the Commission's interest in obtaining the most accurate forecast possible for resource planning purposes. But LPI believes the Commission overstepped its bounds of authority in the Resource Plan Order. LPI asserts that the Commission's objective of an accurate forecast has been, and will continue to be, part of Minnesota Power's resource plans under existing guidelines. Therefore, the Commission can strike ordering paragraphs 12.b. and 12.c. But if the Commission wants to provide greater direction to Minnesota Power, it can do so in a manner consistent with State law via the modifications set forth above.

Date: December 2, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathy Prestidge, hereby certify that I have this day, served a true and correct copy of the following documents to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States Mail at Minneapolis, Minnesota.

**LARGE POWER INTERVENORS' PETITION FOR RECONSIDERATION
AND AMENDMENT**

In the Matter of Minnesota Power's Application for
Approval of its 2013-2027 Resource Plan
Docket No. E015/RP-13-53

Dated this 2nd day of December, 2013

/s/ Kathy Prestidge
Kathy Prestidge

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