

**STATE OF MINNESOTA
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

PUC Docket No. E015/RP-13-53

**ANSWER OF
IZAAK WALTON LEAGUE OF AMERICA – MIDWEST OFFICE,
FRESH ENERGY, SIERRA CLUB, AND
MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY
TO LARGE POWER INTERVENORS' PETITION FOR RECONSIDERATION**

I. INTRODUCTION

Pursuant to Minn. R. 7829.3000, the Izaak Walton League of America – Midwest Office, Fresh Energy, Sierra Club and Minnesota Center for Environmental Advocacy (“Environmental Intervenors”), hereby answer the December 2, 2013, Petition for Reconsideration and Amendment (“Petition”) of the Large Power Intervenors (“LPI”). The Petition seeks reconsideration of the Minnesota Public Utilities Commission’s (“Commission”) *Order Approving Resource Plan, Requiring Filings, and Setting Date for Next Resource Plan* (“Order”), challenging Order paragraph 12(b) and 12(c) in particular. These two ordering points require Minnesota Power to make a more thorough record in its next resource plan of its energy efficiency data assumptions and its assessment of system-wide energy efficiency potential.

Environmental Intervenors respectfully request that the Commission deny the Petition because it fails to establish that the Order is unlawful or unreasonable with regard to any of the matters raised by LPI. Numerous Minnesota statutory provisions grant the Commission jurisdiction over utility obligations to identify and pursue system energy savings, and the Commission's Order appropriately directs Minnesota Power to develop a range of conservation scenarios in its next resource plan.

II. THE PETITION FAILS TO ESTABLISH THAT THE COMMISSION'S ORDER IS UNLAWFUL OR UNREASONABLE.

LPI contests the Order with regard to the requirements in ordering paragraph 12, which 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.

LPI asserts that paragraphs 12.b and 12.c are unlawful and must be stricken. In the alternative, LPI requests amendments to this paragraph that it believes would cure the alleged unlawful language. LPI contends that the Commission is illegally asserting jurisdiction over utility customers by requiring LPI's "CIP-exempt members" to report forecasted energy savings to Minnesota Power or to require these entities "to work with Minnesota Power on any energy conservation project."

Based on its broad-brush review, LPI comes to the unfounded conclusion that the Commission has no jurisdiction over CIP-exempt customer conservation efforts. LPI arguments imply that the legislature intended CIP, Minn. Stat. §216B.241, to be the only energy savings effort allowed by the legislature to the Commission or the DOC, which simply is not the case. LPI is mistaken in its belief that because there is not a specific statutory conservation program applicable to CIP-exempt customers that therefore the Commission does not have sufficient jurisdiction to make even the limited review of the data and scenarios included in Order paragraph 12. However, numerous statutory provisions authorize the Commission’s directions to Minnesota Power to ensure greater analysis of energy efficiency potential.

A. The Commission Has Express Authority to Implement Order Paragraph 12.

The Legislature has recognized that “energy savings are an energy resource, and that cost-effective energy savings are preferred over all energy resources,” and specifically as a means to “reduce pollution and emissions that cause climate change.” Minn. Stat. §216B.2401 (Laws, 2013). The Commission’s jurisdiction to order the actions required of Minnesota Power in Order paragraph 12 is authorized by this recent legislative direction and by other statutory sections described below.¹

First, the IRP statute, Minn. Stat. §216B.2422, defines “resource plan” to include a number of options to be used to meet customer service needs, including “controlling customer loads, and implementing customer energy conservation.” This definition (enacted in 1993) is not limited by the terms of Minn. Stat. § 216B.241. Rather, its language is evidence that the

¹ LPI details the amendments of H.F. 729, passed this year, to Minn. Stat. §§ 216B.2401 and 216C.05, in an attempt to argue that this law does not provide the Commission with implied authority to include CIP-exempt customers in any energy savings efforts. LPI asserts that this statutory change did not change the law “in any meaningful respect,” thereby claiming that these amendments are a nullity. Since neither the state courts nor state agencies may interpret law so that it has no effect, the Commission may not adopt such interpretation. See, Minn. Stat. §645.17.

legislature has granted the Commission broad jurisdiction over energy conservation. The fact that this language does not reference Minn. Stat. § 216B.241 indicates that the IRP process should look beyond CIP in its energy conservation analyses. Moreover, the IRP statute clearly requires utilities to consider taking steps to control customer load and implement efforts to increase customer energy conservation. There is no indication in law that the legislature intended that the only conservation effort included within this broad mandate is CIP.

Likewise, Subdivision 2 of this section requires that utilities include a “least cost plan for meeting 50 and 75 percent of all new and refurbished capacity needs through a combination of conservation and renewable energy resources.” It would not be possible for a utility to assess and implement such plan absent information about customer energy conservation measures and potential. These provisions demonstrate that utilities must evaluate their customers’ ability to control load and increase energy conservation. The Commission has broad jurisdiction over energy conservation efforts beyond those specified in Minn. Stat. § 216B.241.

Second, the ratemaking statute, Minn. Stat. §216B.03, requires that the “commission shall set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164, 216B.241, and 216C.05.” (Emphasis added.) That the language of this provision, enacted in 1983, uses the word “and” means that this legislature has granted the Commission express, long-standing authority to use its rate-setting powers to encourage energy conservation generally and not just through Minn. Stat. § 216B.241.

Third, the certificate of need statute, Minn. Stat. § 216B.243, Subd. 3, provides that “no proposed large energy facility shall be certified...unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures[.]” To implement this statutory requirement the Commission can

investigate and order a utility to implement customer energy conservation measures instead of constructing new generation facilities.

Finally, Minn. Stat. § 216C.05, Subd. 2 establishes overall energy efficiency goals for the state. Given the Commission's unique role in energy regulation, the Commission must use its authority to ensure that the utilities it regulates meet these statewide goals.

Through the foregoing statutes, the legislature has stated that the Commission's jurisdiction includes, and indeed prioritizes, energy savings, such that the Commission may require complete records of the actions by utilities to accomplish the purposes of these statutes.

B. The Utility Energy Savings Goal Expressed In Minn. Stat. §216B.2401 Includes The Potential For Energy Efficiency From All Electric Customers.

Contrary to LPI's arguments, CIP-exempt customer energy use and savings are relevant and important to meeting Minnesota's overall energy savings goal in Minn. Stat. § 216B.2401.

This statutory section states, in relevant part:

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 through cost-effective energy conservation improvement programs and rate design, 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.

Minn. Stat. § 216B.2401. (Emphasis added.) LPI asserts that the phrase "annual retail energy sales" should exclude sales to CIP-exempt customers, because this phrase is defined by Minn. Stat. § 216B.241 to exclude such sales. This is not true. Minn. Stat. § 216B.241 does not define the phrase "annual retail energy sales." Instead, it expressly defines the term "gross annual retail energy sales," in § 216B.241, Subd. 1(g). (Emphasis added.) Moreover, the terms defined by

Minn. Stat. § 216.241, Subd. 1, including the definition of “gross annual retail energy sales,” are defined only for the purposes of Minn. Stat. §§ 216B.241 and 216B.16 – and no other statutory sections. The legislature did not incorporate the language of Minn. Stat. § 216B.241 into Minn. Stat. § 216B.2401 so as to exclude CIP-exempt customers from the state’s overall energy savings goal. Thus, it is reasonable to interpret Minn. Stat. §216B.2401 to include all electrical use in the state, which includes energy sales to both non-CIP-exempt and CIP-exempt customers.

LPI’s reading of Minn. Stat. §216B.2401 also completely ignores the use of the word “and” after the phrase “conservation improvement programs.” The use of the word “and” thereafter indicates that the legislature intends for the state’s energy savings goal to be “achieved by energy consumers without direct utility involvement” apart from “conservation improvement programs.”² By including the phrase “other efforts to promote energy efficiency and energy conservation” at the end of Minn. Stat. § 216B.2401, it is clear that the legislature seeks to include all possible means to achieve this goal.

In sum, the Commission has ample reasonable legal and policy justifications for Order paragraph 12, such that it should refuse to reconsider these requirements.

C. The Amendments Proposed by LPI Would Render Order Paragraph 12.b And 12.c Superfluous And Should Be Rejected.

LPI proposes the following amendments to the Order, paragraph 12:

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;

² In any event, the prohibition on CIP-exempt customers participating in a “utility conservation improvement program” contained in Minn. Stat. § 216B.241, Subd. 1a(b) does not apply to the requirements of Order paragraph 12 because the Order does not require an expenditure of the funds required by Minn. Stat. § 216B.241, Subd. 1a, and does not itself result in an “energy conservation improvement.” Therefore the Order does not create the type of program from which certain customers may be exempt.

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...

LPI's proposed changes to paragraph 12.b would do no more than require Minnesota Power to include a sentence in future IRPs stating the obvious fact that forecasts based on historical load growth include the effect of energy conservation and efficiency efforts, even if such efforts are not separately quantified. The Commission need not seek verification for an indisputable fact.

Similarly, LPI's proposed amendment to Order paragraph 12.c simply excludes CIP-exempt customers from any future engagement with Minnesota Power in developing scenarios, making it applicable only to non-CIP-exempt customers. Although the LPI Petition references a forthcoming state-wide DOC report on energy savings to suggest that the Commission could require a utility-specific dialogue in subparagraph 12.c., LPI's suggested amendment would actually eliminate such a dialogue with CIP-exempt customers. The final result of LPI's amendment to subparagraph 12.c is to render it superfluous, since Minnesota Power already evaluates additional non-CIP-exempt activities that could achieve greater energy savings in light of cost effectiveness.

III. CONCLUSION

The Order's measures fall well within the Commission's jurisdictional and investigatory authority and are eminently reasonable given the state's broad energy conservation policies, the existence of successful industrial energy efficiency programs in other states, Minnesota Power's current proactive engagement with its large customers on all other energy-related matters, and the collective magnitude of these industrial loads as a percentage of the Minnesota Power

system. Therefore, Environmental Intervenors respectfully request that the Commission reject LPI's Petition for Reconsideration.

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Respectfully submitted,

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