

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of Dairyland Power
Cooperative's Optional Integrated
Resource Plan Compliance

MPUC Docket No. ET3/RP-14-572

REPLY COMMENTS OF DAIRYLAND POWER COOPERATIVE

INTRODUCTION

In 2012, Minn. Stat. § 216B.2422, Subd. 2b. ("Subd. 2b.") was added to the Minnesota Statutes. Minn. Stat. § 216B.2422, Subd. 2b. authorizes Generation and Transmission ("G&T") cooperatives that have at least 80% their member distribution cooperatives located outside of Minnesota, and that provide less than four percent of the electricity annually sold at retail in the state of Minnesota to submit a report to the Commission in lieu of filing a resource plan as required by Minn. Stat. § 216B.2422, Subd. 2. The purpose of Subd. 2b. is to streamline the integrated resource plan ("IRP") filing requirements for G&T cooperatives serving a small amount of Minnesota retail load. The streamlined O-IRP report is also intended to reduce the expenditure of time and resources by the Commission and the Minnesota Department of Commerce, Division of Energy Resources ("DOC/DOE") reviewing of filings by G&T cooperatives serving a small amount of Minnesota retail load.

Dairyland Power Cooperative (“Dairyland”) is eligible to submit an O-IRP report pursuant to Subd. 2b. in lieu of an IRP under Subd. 2 since more than 80% of the its member distribution cooperatives are located outside of Minnesota, and Dairyland provides less than four percent of the electricity annually sold at retail in the state of Minnesota..

Dairyland filed its first O-IRP report under Subd. 2b. with the Commission in 2013 (Docket No. ET-003/RP-13-565). On October 3, 2013, the Commission issued its Order Acknowledging Receipt of Compliance Report and Closing Docket (“2013 DPC Report Order”).

On June 30, 2014, Dairyland filed its 2014 report with the Commission. The Commission Notice issued July 8, 2014 set an initial comment period closing August 5, 2014 at 4:30 p.m., with reply comments due by August 15, 2014 at 4:30 p.m. The Notice listed issues that were open for comment:

- Whether Dairyland’s report contains sufficient detail on how the cooperative plans to provide reliable service;
- Whether legislation amending Minn. Stat. §216B.2422, subd. 2c requires Dairyland to include information regarding progress on its system toward achieving the state greenhouse gas emission reduction goals established in Minn. Stat. §216II.02;
- Any other analyses or recommendations on the Dairy land filing.

Timely comments were filed by the DOC/DOE and the Minnesota Center for Environmental Advocacy (“MCEA”). Dairyland’s reply comments respond to both the DOC/DOE and MCEA comments.

I. WHETHER DAIRYLAND'S REPORT CONTAINS SUFFICIENT DETAIL ON HOW THE COOPERATIVE PLANS TO PROVIDE RELIABLE SERVICE.

The DOC/DOE was the only commenter responding to this Commission question. On page 2 of its comments, the DOC/DOE states:

The Department is unable to confirm whether Dairyland has sufficient resources to provide reliable service since it was not possible, for example, to verify Dairyland's forecasts of energy use by its members.

This is essentially the same comment submitted by the DOC/DOE to the Commission in connection with the filing of Dairyland's first O-IRP report in 2013 (Docket No. ET-003/RP-13-565). In its August 1, 2013 letter to the Commission in that docket, the DOC/DOE stated:

[T]he Department is unable to assess Dairyland's O-IRP because the Department has not been provided with adequate information to assess the forecast for all of Dairyland's system. Since the Department is unable to assess the Cooperative's system forecast, the Department also is unable to evaluate whether or not Dairyland has sufficient resources to serve the needs of its system.

In its 2013 DPC Report Order in Docket No. ET-003/RP-13-565, the Commission recognized the difference between an IRP filed under Minn. Stat. § 216B.2422, Subd. 2 and an O-IRP report submitted by an eligible G&T cooperative under Subd. 2b and concluded:

In view of the limited scope of compliance reports, and without limiting its options for future filings, Commission acknowledges receipt of Dairyland's compliance report, finds the report complete, and will close the current docket.¹

Dairyland requests that the Commission take similar action on its 2014 O-IRP report. However, Dairyland would like to address the DOC/DOE's substantive concern that it cannot assess Dairyland's forecast for its entire system. Dairyland is eligible to submit an O-IRP report in lieu of an IRP because more than 80 percent of its membership located outside of

¹ 2013 DPC Report Order, at 2.

Minnesota and provides less than four percent of Minnesota's annual retail electricity sales. Since the Dairyland system (load and resources) is overwhelming outside the state of Minnesota, Dairyland does not believe DOC/DOE is required to or needs to replicate Dairyland's system forecast to address reliability for Dairyland's Minnesota members.

But the Commission should not assume that unless the DOC/DOE verifies Dairyland's system forecast, the forecast is not reviewed and approved by an independent third party. Dairyland is a borrower from the Rural Utilities Service ("RUS") in the U.S. Department of Agriculture. The RUS has adopted rules to be followed by its power supply borrowers in preparing their forecasts. *See* 7 CFR Part 1710. Dairyland, as a RUS power supply borrower, is required to prepare:

A load forecast [that] is a thorough study of a borrower's electric loads and the factors that affect those loads in order to estimate, as accurately as practicable, the borrower's future requirements for energy and capacity. The load forecast of a power supply borrower includes and integrates the load forecasts of its member systems.²

Dairyland is required to maintain an RUS-approved load forecast on an ongoing basis by either (1) submitting a new load forecast to RUS for review and approval at least every 36 months, and then submitting updates to the load forecast to RUS for review and approval in each intervening year; or (2) submitting a new load forecast to RUS for review and approval not less frequently than every 24 months.³

A copy of the January 14, 2013 approval by RUS of Dairyland's 2012 forecast is attached for the Commission's information as Exhibit A to these Comments. Among other things, the RUS determined that the methods and assumptions used by Dairyland in preparing its forecast are reasonable. RUS' approval of the load forecast requires that "Dairyland and its

² 7 CFR § 1710.200.

³ 7 CFR § 1710.204 (a).

members must use these forecasts in all engineering, environmental, financial studies, financial forecasts, and in any studies in support of loan applications.” Since an O-IRP report may rely upon reports submitted in other proceedings to other government agencies, the Commission should recognize and take comfort that Dairyland’s forecast has been verified by RUS.

II. WHETHER LEGISLATION AMENDING MINN. STAT. §216B.2422, SUBD. 2C REQUIRES DAIRYLAND TO INCLUDE INFORMATION REGARDING PROGRESS ON ITS SYSTEM TOWARD ACHIEVING THE STATE GREENHOUSE GAS EMISSION REDUCTION GOALS ESTABLISHED IN MINN. STAT. §216H.02.

Minn. Stat. § 216B.2422, Subd. 2c. (“Subd. 2c.”) was added to the statutes by Laws of Minnesota 2014, Chapter 254, Sec. 12. As enacted, Subd. 2c. provides:

Subd. 2c. Long-range emission reduction planning. Each utility required to file a resource plan under subdivision 2 shall include in the filing a narrative identifying and describing the costs, opportunities, and technical barriers to the utility continuing to make progress on its system toward achieving the state greenhouse gas emission reduction goals established in section 216H.02, subdivision 1, and the technologies, alternatives, and steps the utility is considering to address those opportunities and barriers.

DOC/DOE’s opinion, as set forth in its comments, is that an eligible G&T cooperative submitting an O-IRP under Subd. 2b. is **NOT** required to include information regarding progress on its system toward achieving the state greenhouse gas emission reduction goals established in Minn. Stat. §216H.02. According to the DOC/DOE, the legislature did not intend to require eligible G&T cooperatives to file such information, as Subd. 2c. applies only to IRPs filed under Subd. 2, and not O-IRP reports submitted pursuant to Subd. 2b.

Dairyland agrees with the DOC/DOE that an eligible G&T cooperative submitting an O-IRP under Subd. 2b. is not required to include information regarding progress on its system

toward achieving the state greenhouse gas emission reduction goals established in Minn. Stat. §216H.02.

The MCEA's comments, on the other hand, strain to argue that Dairyland should be subject to the requirements of Subd. 2c., despite the clear statutory language in Subd. 2c. The MCEA contends that Dairyland is required to file an IRP under Subd. 2, and an O-IRP report is just an alternative way for eligible G&T cooperatives to comply with the requirement to file an IRP under Subd. 2b.

The Commission rejected that argument in its 2013 DPC Report Order. An eligible G&T cooperative such as Dairyland is authorized by Subd. 2b. to file an annual O-IRP report under Subd. 2b. in lieu of a resource plan every 2-3 years under Subd. 2.⁴ An O-IRP report is not merely an alternative way for eligible G&T cooperatives to submit an IRP. An O-IRP report may be filed by eligible G&T cooperatives in lieu of an IRP. The specific language referring to IRPs filed under Subd. 2 and not including O-IRP reports submitted under Subd. 2b. in newly enacted Subd. 2c is confirmation by the legislature of the Commission's ruling in the 2013 DPC Report Order.

As suggested by the DOC/DOE, Dairyland has reviewed the DOC/DOE straw proposal in Docket No. ET9/RP-13-1104 for how utilities should calculate progress towards the goal of reducing greenhouse gas emissions, and the comments of other parties in that docket. Although the exchange of ideas is of interest, the Commission has not yet issued an order addressing the DOC/DOE straw proposal in Docket No. ET9/RP-13-1104.

More importantly, however, on June 2, 2014 the U.S. Environmental Protection Agency ("USEPA") issued its proposed Clean Power Plan rule issued by under Section 111(d) of the

⁴ 2013 DPC Report Order, at 3.

federal Clean Air Act.⁵ The Proposed Rule contains USEPA's proposals for interim and final CO₂ emission "goals" for each state. The goals will, in effect, force each state to reduce the carbon intensity of power generation by reducing CO₂ emissions from its existing fossil fuel fired electric generating units (EGUs). The deadline for submitting comments on the Proposed Rule is October 16, 2014.

Neither the form of USEPA's final rule or the content of each state's plan to meet interim and final CO₂ emission "goals" are known at this time. While the DOC/DOE suggests that the Commission could request Dairyland to provide the information required to be submitted with an IRP under Subd. 2, Dairyland suggests that rather than the Commission requesting information from Dairyland that it is not required to prepare or submit, a better use of the Commission's and Dairyland's resources would be to see what is ultimately required for Dairyland to comply with USEPA's final rule and the states' plans.

III. DAIRYLAND'S O-IRP REPORT IS NOT REQUIRED TO CONSIDER THE ENVIRONMENTAL COSTS OF ELECTRICITY GENERATION.

A cooperative filing an O-IRP report is not required to use the environmental cost values in its O-IRP report. Minn. Stat. § 216B.2422, Subd. 3 ("Subd. 3") requires the Commission to establish a range of environmental costs, and further states: "A utility shall use the values established by the commission in conjunction with other external factors, including socioeconomic costs, when evaluating and selecting resource options in all proceedings before the commission, including resource plan and certificate of need proceedings." (Emphasis added.)

⁵ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Proposed Rule, 79 Fed. Reg. 34,830 (June 18, 2014) (the "Proposed Rule").

MCEA contends that an O-IRP report must use the environmental cost values established by the Commission because, as described above, it claims that despite the clear statutory language in Subd. 2b, Dairyland is required to file an IRP under Subd. 2. The MCEA again ignores that an O-IRP report may be filed by an eligible G&T cooperative in lieu of an IRP under Subd. 2. As explained above, the Commission should confirm its position that an O-IRP report is not a resource plan, but is a report submitted in lieu of a resource plan.

The MCEA also maintains that the Commission’s review of an O-IRP report is a “proceeding” as that term is used in Subd. 2b. As Dairyland explained in its O-IRP report (at 18), the Commission has defined what constitutes a “proceeding” in Minn. Rule §7829.0100, subp. 18:

“Proceeding” means a formal or informal undertaking of the commission, in which it seeks to resolve a question or issue taken up on its own motion or presented to it in a complaint, petition, or notice of a proposed change in a rate, service, or term or condition of service.

Under this definition, an O-IRP report does not trigger the commencement of a Commission “proceeding.” Because an O-IRP report is not something taken up by the Commission’s own motion, or presented to the Commission in a complaint or petition, and does not propose any changes in a rate, service, or term or condition of service, the filing by Dairyland of an O-IPR report does not commence a Commission proceeding.

MCEA urges the Commission to reject its definition of a “proceeding” adopted in Minn. Rule §7829.0100, subp. 18 because, according to MCEA, “if followed to its logical conclusion, environmental costs would not need to be considered in any resource plan proceeding because no IRP—whether submitted under subdivision 2 or 2b—is something ‘taken up by the Commission’s own motion, or presented to the Commission in a complaint or

petition.”⁶ The MCEA thus ignores that Subd. 2b allows a qualifying G&T cooperative to submit an O-IRP report in lieu of an IRP under Subd. 2.

MCEA’s argument ignores the language in Subd. 3 that requires a utility to use the externality values “when evaluating and selecting resource options in all proceedings before the commission, including resource plan and certificate of need proceedings.” (Emphasis added.) Subd. 3 did not simply state that the externality values needed to be used “in all proceedings.” The legislature appears to have recognized a narrower definition of “proceedings” than that urged by the MCEA, so it expressly identified resource plan and certificate of need proceedings as “proceedings” for purposes of externality values consideration. But the Commission’s consideration of an O-IRP report under Subd. 2b. was not identified as being a “proceeding” for purposes of externality value consideration. Since the submittal of an O-IRP report by an eligible G&T cooperative is in lieu of the filing of an IRP, and the submittal of an O-IRP report is not identified in Subd. 3 as a resource planning proceeding, externality values need not be addressed by the O-IRP report.

In addition, the submittal of an O-IRP report is not a proceeding in which resource options are evaluated and selected. The submittal of an O-IRP report is not the submittal of a resource plan. Subd. 2b. allows a qualifying G&T cooperative to file a “report” in lieu of a “resource plan.”⁷ Subd. 2b. requires that “The report must include projected demand levels for the next 15 years and generation resources to meet any projected generation deficiencies.” But Subd. 2b. does not require an O-IRP report to evaluate or select resource options for the next 15 years. An O-IRP report is intended to provide the Commission with an annual update of

⁶ Once again, MCEA incorrectly conflates an IRP submitted on Subd. 2 and an O-IRP report submitted under Subd. 2b. As explained above, an eligible G&T cooperative may submit an O-IRP Report under Subd. 2b in lieu of an IRP under Subd. 2.

⁷ “A cooperative may, in lieu of filing a resource plan under subdivision 2, elect to file a report to the commission....” (Emphasis added.) Subd. 2b.

whether a qualifying G&T cooperative will have adequate generation resources to meet its projected load. In addition, an O-IRP report will provide the Commission with notice of planned infrastructure projects such as new power plants that may be undertaken by a qualifying G&T cooperative. But it is unreasonable to read Subd. 2b. as requiring an O-IRP report to evaluate and select resource options on an annual basis using the externality values established by the Commission as opposed to the 2 to 3 year schedule for filing a full-blown IRP under Subd. 2. Requiring O-IRP reports to annually address the externality values established by the Commission would increase the burdens on the Commission and those eligible G&T cooperatives submitting annual O-IRP reports, and is not reasonable when the clear intent of Subd. 2b. is to streamline the filing requirements for G&T cooperatives serving a small amount of Minnesota retail load and to reduce the expenditure of time and resources by the Commission and the DOC/DOE.

CONCLUSION

Based on the foregoing, Dairyland requests that the Commission find and conclude that:

1. More than 80 percent of Dairyland's member distribution cooperatives are located outside of Minnesota.
2. Dairyland provides less than four percent of the electricity annually sold at retail in the State of Minnesota.
3. Dairyland's O-IRP report includes projected demand levels for the next 15 years and generation resources to meet any projected generation deficiencies.

The Commission should acknowledge receipt of Dairyland's O-IRP report, and close this docket without making findings on the report's merits.

Dated this 15th day of August, 2014.

Respectfully submitted,

DAIRYLAND POWER COOPERATIVE

By:

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By: /s/ Jeffrey L. Landsman
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United States Department of Agriculture
Rural Development

EXHIBIT A to
Dairyland Power Cooperative's
Reply Comments
MPUC Docket No. ET3/RP-14-572

JAN 14 2013

Mr. William L. Berg
General Manager
Dairyland Power Cooperative
P.O. Box 817
La Crosse, Wisconsin 54602-0817

RECEIVED

FEB 04 2013

PRES. & CEO

Dear Mr. Berg:

We have reviewed the 2012 Load Forecast for Dairyland Power Cooperative (Dairyland) and its members. The studies and board resolutions were submitted to the Rural Utilities Service (the Agency) on December 11, 2012, and prepared pursuant to the 2012 Work Plan approved by the Agency on August 13, 2012. The methods and assumptions used are reasonable. The forecast was effectively coordinated with all of Dairyland's members. A certified resolution, dated December 3rd, 2012, from Dairyland's Board of Directors approving the forecast and its uses was received by the Agency.

This letter documents Agency approval of Dairyland's 2012 Load Forecast. Member studies developed in coordination with this forecast are also approved. The Agency will consider the 2012 studies current, pursuant to 7 CFR 1710 Subpart E, Load Forecasts. Dairyland and its members must use these forecasts in all engineering, environmental, financial studies, financial forecasts, and in any studies in support of loan applications.

A copy of this letter is being sent to each of Dairyland's members.

Sincerely,

A handwritten signature in dark ink, appearing to read "Louis E. Riggs".

LOUIS E. RIGGS
Acting Director
Electric Staff Division
Rural Utilities Program

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