

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

Beverly Jones Heydinger	Chair
Betsy Wergin	Vice Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner

In the Matter of the Application of Dakota Electric Association for Authority to Increase Rates for Electric Service in Minnesota

DOCKET NO. E-111/GR-14-482

**PETITION FOR RECONSIDERATION
OF THE OFFICE OF
THE ATTORNEY GENERAL**

I. INTRODUCTION

Pursuant to Minnesota Statutes section 216B.27 and Minnesota Rules part 7829.7300, the Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) files this Petition for Reconsideration of the Minnesota Public Utilities Commission’s (“Commission”) Findings of Fact, Conclusions, and Order (“Order”) in this matter. The OAG requests that the Commission reconsider its decision to award the company \$150,000 more than its test-year staffing cost based on the Commission’s finding of an “unusually high number of overall vacancies in the 2013 test year.”¹ The Commission should reconsider this decision because it is unsupported by the record (having been based on an incomplete analysis of Dakota’s staffing levels that was presented for the first time in briefing papers and quantified for the first time at oral argument), and because the adjustment is duplicative of Commission’s separate decision to award the company more than \$103,000 for atypical vacancies during the test year.²

¹ Order at 10.

² *See Id.*

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO AWARD DAKOTA \$150,000 MORE THAN ITS TEST YEAR COSTS FOR TEST YEAR VACANCIES.

The Commission granted Dakota three upward adjustments from the company's 2013 test year staffing costs: (1) \$101,183 for the cost of a new position; (2) \$103,562 for atypical extended vacancies in the test year due to terminal illness; and (3) \$150,000 for Dakota's claim of unusually high number of vacancies in the test year.³ While the OAG contends that all of these adjustments are unnecessary because Dakota's 2013 staffing costs were higher than normal levels, it seeks reconsideration only for the \$150,000 adjustment related to Dakota's supposed high number of vacancies. This adjustment was based on the Commission's conclusion that "Dakota Electric has demonstrated on the record that 2013 test-year payroll costs are lower than ongoing payroll costs are likely to be, due to known and measurable changes associated with the probable return of normal levels of employee turnover and the addition of a new position."⁴ This adjustment is particularly inappropriate, and should be reconsidered, because it relies on a misplaced analysis of Dakota's staffing levels, and because the Commission had already awarded the company a separate adjustment for what it determined were atypical vacancies in the 2013 test year.

A. THE COMMISSION'S DECISION IS NOT SUPPORTED BY AN ANALYSIS OF DAKOTA'S STAFFING COSTS.

First, the Commission's conclusion that Dakota demonstrated that its 2013 test-year *costs* were lower than they would likely be going forward is not supported in the record. In making this determination, the Commission appears to have relied on an analysis presented for the first time in its briefing papers, in which staff presented analysis showing that Dakota's cumulative

³*Id.*

⁴*Id.*

duration of vacancies in 2012 and 2013 were approximately 28.5 months and 52 months, respectively.⁵ Notably, staff did not attempt to quantify the financial impact of the differing staffing levels during these two years. Rather, staff admitted that its analysis was “inconclusive” because “1) the record lacked a monetized value of each year’s vacancies . . . and 2) it was a limited sample of only two operating years.”⁶ In other words, staff recognized that its analysis could not show that any increased vacancies in Dakota’s 2013 test year resulted in staffing costs that were lower than normal—or even lower than Dakota’s 2012 staffing costs.⁷ On the other hand, the OAG presented undisputed evidence that Dakota’s staffing costs in its 2013 test year were nearly \$63,000 *higher* than its 2012 staffing costs and nearly \$28,000 *higher* than Dakota’s average costs from 2010 to 2013.⁸ And, staff agreed that when all of Dakota’s requested payroll adjustments were considered—including adjustments for wage increases, nominalizing the capital and expense ratios for test year labor costs, and vacancies—the company’s request resulted in an “uncharacteristic cost increase.”⁹

Moreover, even if the Commission could conclude that Dakota’s 2013 test-year vacancies resulted in lower-than-normal staffing costs, the Commission’s specific adjustment of \$150,000 is not supported in the record. Instead, the Commission’s adjustment appears to be based entirely on claims made for the first time at oral argument by Dakota’s counsel that the company’s 2013 vacancies resulted in approximately \$150,000 to \$200,000 in non-recurring

⁵ See Staff Briefing Papers at 15.

⁶ *Id.*

⁷ Moreover, staff commented that “the increased duration of position vacancies [during the test year] could lead to increases in other operating costs that may be captured in the test year, such as death/disability benefit payments, unemployment insurance, contracted/temporary services, increased overtime paid to other employees, severance benefit payments, etc.” Staff Briefing Papers at 16. The Order did not address these inflated costs during the test year.

⁸ See Ex. 203 at 6 (Lee Direct).

⁹ Staff Briefing Papers at 15.

salary savings.¹⁰ Dakota did not provide any basis for this claimed financial impact—or why its estimate varied by \$50,000—or refer to any information in the record from which such an inference can be drawn. By presenting this argument so late in the proceeding, Dakota also ensured that its claim could not be vetted by other parties to determine whether it was accurate. Rather than rejecting Dakota’s new suggestion, the Commission appears to have simply chosen the low end of the proffered range. Dakota’s suggested impact has no record support and should have been rejected.

B. THE COMMISSION’S ADJUSTMENT IS DUPLICATIVE OF ITS SEPARATE ADJUSTMENT FOR ATYPICAL AND EXTENDED TEST YEAR VACANCIES.

Second, by relying on staff’s analysis of cumulative vacancies in 2012 and 2013 to make its \$150,000 adjustment, the Commission “double-counted” the effect of atypical extended vacancies that occurred in 2013 that it had already addressed in a different adjustment. Specifically, staff’s comparison of Dakota’s 2013 test year cumulative vacancies to its 2012 cumulative vacancies included extended vacancies in 2013 due to the terminal illness of two Dakota employees. In other words, the impact of those two extended vacancies were included in the staff’s determination that Dakota experienced cumulative vacancies of 52 months during the test year. The Commission, however, separately addressed these atypical vacancies by awarding Dakota more than \$103,000 above its test year staffing costs. Having already adjusted Dakota’s staffing costs for the specific atypical vacancies it found, the Commission’s general adjustment to reflect the supposedly abnormal 2013 vacancy rates was duplicative. Accordingly, this general adjustment should have been rejected, and the Commission should reconsider its decision.

¹⁰ See Order at 9.

III. CONCLUSION

For the reasons set forth above, the OAG requests that the Commission reconsider its decision to grant Dakota \$150,000 for staffing costs above its 2013 test-year for supposedly increased test-year vacancies. The record does not support the conclusion that Dakota's staffing costs in 2013 were abnormally low. On the contrary, the record thoroughly demonstrates that Dakota's staffing costs in 2013 were higher than normal. Moreover, the Commission separately adjusted Dakota's staffing costs for what it determined were specific, abnormal occurrences during the test year. Accordingly, its separate, generalized adjustment for Dakota's 2013 vacancies was duplicative and inappropriate, and should be reconsidered.

Dated: June 29, 2015

Respectfully submitted,

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s/ Ian Dobson
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June 29, 2015

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St. Paul, MN 55101-2147

Re: *In the Matter of the Application of Dakota Electric Association for Authority to Increase Rates for Electric Service in Minnesota*
Docket No. E-111/GR-14-482

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find the *Petition for Reconsideration* 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 also enclosed.

Sincerely,

s/Ian Dobson

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Enclosure

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