BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55101-0620

FOR THE PUBLIC UTILITIES COMMISSION OF THE STATE OF MINNESOTA
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Review of the July 2018-December 2019 Annual Automatic Adjustment Reports	OAH Docket No. 82-2500-37082 PUC Docket No. E-999/AA-20-171

EXCEPTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE SUBMITTED BY THE LARGE POWER INTERVENORS

STOEL RIVES LLP
Andrew P. Moratzka
Riley A. Conlin
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402
Tele: (612) 373-8800
Fax: (612) 373-8881

Jessica L. Bayles
1150 18th Street NW, Suite 325
Washington, DC 20036
Tele: (202) 398-1795
Fax: (202) 621-6394

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The following constitutes the Exceptions to the Findings of Fact, Conclusions of Law, and Recommendations of the Administrative Law Judge ("ALJ") in this matter dated August 11, 2021 (the "Recommendations"),[1] of Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Cleveland-Cliffs Minorca Mine Inc.; Enbridge Energy, Limited Partnership; Gerdau Ameristeel US Inc.; Hibbing Taconite Company; Northern Foundry, LLC; Sappi Cloquet, LLC; USG Interiors, Inc; United States Steel Corporation (Keetac and Minntac Mines); and United Taconite, LLC (collectively, the "Large Power Intervenors" or "LPI").

I. INTRODUCTION

As part of its approval of utilities' 2018-2019 annual automatic adjustment ("AAA") reports, the Minnesota Public Utilities Commission ("Commission") determined that there was "a genuine issue of material fact in dispute about whether Minnesota Power's forced outage costs for the period were reasonable and prudent—and, if not, the amount of overcharges (plus interest) that should be returned to ratepayers through the [fuel adjustment clause (or 'FCA')]."[2] As such, the Commission ordered that this matter be referred to the Minnesota Office of Administrative Hearings for a contested-case proceeding before an ALJ. In its Referral Order, the Commission directed that "Minnesota Power will bear the burden of proving any or all of its forced outage costs were reasonably and prudently incurred, applying good utility practices."[3]

At issue in this contested case are three specific forced outages: (1) the Boswell Unit 4 hot reheat ("HRH") steam line outage caused by an HRH steam line longitudinal seam weld failure (the "Boswell 4 Forced Outage"), (2) the Boswell Unit 3 outage due to a hydrogen leak, and (3) the Boswell Unit 3 outage caused by a phase bushings failure (the "Boswell 3 Forced Outage" and collectively, the "Forced Outages").[4] LPI argued in the proceedings below that Minnesota Power failed to meet its heavy burden to show that its maintenance practices related to the Forced Outages

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1 Findings of Fact, Conclusions of Law, and Recommendations (Aug. 11, 2021) (eDocket No. 20218-177011-01).

2 Order Accepting 2018-2019 Electric AAA Reports; Notice of and Order for Hearing at 4 (Sept. 16, 2020) (eDocket No. 20209-166630-01) (the "Referral Order").

3 *Id.*

4 LPI clarifies that references to the Forced Outages is specific to the Boswell 3 Forced Outage and Boswell 4 Forced Outage, consistent with the Department's positions seeking refunds associated with those outages and not the hydrogen leak.

comported with the Good Utility Practice standard.[5] LPI's recommendation was largely based on the Minnesota Department of Commerce, Division of Energy Resources' ("Department") investigation, which included testimony from an independent expert witness, who analyzed Minnesota Power's maintenance practices within the context of the Good Utility Practice standard. Through its investigation, the Department discovered significant issues with Minnesota Power's maintenance practices associated with the Forced Outages and recommended that Minnesota Power refund ratepayers specific replacement power costs associated with the Forced Outages.[6]

The ALJ concluded that Minnesota Power did not reasonably and prudently incur the forced outage costs attributable to the Boswell 4 Forced Outage and that such costs should therefore be refunded to customers.[7] The ALJ also found that the Boswell 3 Forced Outage was a consequence of seal oil that Minnesota Power introduced into the generator unit while addressing the hydrogen leak.[8] However, the ALJ erred in concluding that "Minnesota Power made reasonable and prudent decisions in attempting to resolve the [hydrogen leak] problem" at Boswell 3 that ultimately led to the Boswell 3 Forced Outage, based upon an incomplete application of the Good Utility Practice standard adopted by the ALJ.[9]

LPI appreciates the diligent effort undertaken by the ALJ to resolve this complex matter and supports the ALJ's findings and conclusions with respect to the Boswell 4 Forced Outage, including the recommendation that the replacement power costs should be refunded to ratepayers. LPI also supports the ALJ's finding that Minnesota Power's actions in addressing the hydrogen leak caused the Boswell 3 Forced Outage. Nonetheless, LPI believes the Commission should

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5 The Recommendations define "'Good Utility Practice' as any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located. Furthermore, "good utility practice" includes, but is not limited to, North American Reliability Corporation (NERC) criteria, rules, guidelines, and standards, Federal Energy Regulatory Commission (FERC) criteria, rules, guidelines, and standards, and Minnesota Public Utilities Commission criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any predecessor or successor organization to the foregoing entities." Recommendations at 10, ¶ 45 of the Findings of Fact (citations omitted).

6 *See, e.g.*, Ex. 10 at 38:59-41:11, 44:6-49:10 (Polich Direct).

7 Recommendations at 2, ¶¶ 1-2 of the Summary of Recommendations.

8 *Id.* at 34, ¶ 154 of the Findings of Fact.

9 *Id.* at 30, ¶ 135 of the Findings of Fact.

further examine the ALJ's ultimate application of the Good Utility Practice standard in reaching the conclusion that Minnesota Power's maintenance practices associated with the Boswell 3 Forced Outage were reasonable. LPI, therefore, submits these Exceptions to advocate for narrow modifications to the Recommendations with regard to the Boswell 3 Forced Outage.

II. ANALYSIS

A. Minnesota Power Bears the Burden of Proof to Demonstrate That It Prudently Incurred the Costs Associated with the Forced Outages

Under Minnesota law, it is Minnesota Power's burden to demonstrate that its cost recovery of replacement power costs is just and reasonable. The governing statute provides that "Every rate made, demanded, or received by any public utility … shall be just and reasonable…. Any doubt as to reasonableness should be resolved in favor of the consumer."[10] Minnesota Power's burden was further solidified by the Referral Order, which explicitly and unambiguously establishes that "Minnesota Power will bear the burden of proving that any or all of its forced outage costs were reasonably and prudently incurred applying good utility practices."[11] For these reasons, LPI strongly supports the following conclusions regarding the appropriate standard of review in this matter:

> 3. Minnesota Power [bears] the burden to demonstrate by a preponderance of the evidence that its maintenance practices were consistent with good utility practice, and that any deviation from this standard did not contribute to the forced outage events at issue in this proceeding.
>
> 4. The utility always retains the burden of proving the reasonableness of costs the utility seeks to charge ratepayers. Submitting evidence on an issue does not create a rebuttable presumption of reasonableness.[12]

LPI further supports the ALJ's specific application of Minnesota Power's burden with regard to the Boswell 4 Forced Outage, where the ALJ stated that "[it] is undisputed that Minnesota Power has the burden of proof in this case to show that it properly inspected and maintained Boswell Unit

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10 Minn. Stat. § 216B.03.

11 Referral Order at 4.

12 Recommendations at 36-37, ¶¶ 3-4 of the Conclusions of Law (citations omitted).

No. 4's hot reheat line."[13] Further, LPI supports the definition of Good Utility Practice adopted by the ALJ.[14] However, as discussed below, the ALJ misapplied the Good Utility Practice standard in considering Minnesota Power's actions with respect to the seal oil introduced into the Boswell 3 generator.

B. The ALJ Correctly Concluded That Minnesota Power Failed to Demonstrate That Its Maintenance Practices Associated with the Boswell 4 Forced Outage Satisfy the Good Utility Practice Standard

The Department's expert identified several shortcomings with Minnesota Power's maintenance practices associated with the Boswell 4 Forced Outage, including infrequent inspections, failure to properly consider the age of the equipment, lack of sufficient maintenance cost forecasts, and reliance on improper industry guidelines.[15] LPI supports the ALJ's conclusion based on the Department's expert testimony that "a five-year inspection program was consistent with good utility practice"[16] and that Minnesota Power did "not [meet] its burden to show that good utility practice allowed it to wait ten years between full hot reheat line inspections."[17] Though the ALJ properly recognized that it is solely Minnesota Power's burden to demonstrate that its maintenance practices were consistent with Good Utility Practice,[18] Minnesota Power also failed to adequately rebut the Department's evidence on the Boswell 4 Forced Outage.[19] As such, the ALJ correctly concluded that "Minnesota Power's maintenance and inspection programs for Boswell Unit No. 4's hot reheat line were inconsistent with good utility practice"[20] and that the forced outage costs were not reasonably and prudently incurred because they "could have been avoided with maintenance and inspection programs aligned with good utility practices."[21]

LPI agrees with the ALJ's conclusion that Minnesota Power should be required to refund ratepayers the costs associated with the Boswell 4 Forced Outage.[22] While the Recommendations note that the "Department and Minnesota Power agree on the amount of incremental costs

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13 *Id.* at 25, ¶ 110 of the Findings of Fact.
14 *Supra* n. 5.
15 *See, e.g.*, Ex. 10 at 38:59-41:11, 44:6-49:10 (Polich Direct).
16 Recommendations at 26, ¶ 111 of the Findings of Fact; *citing* Ex. 10 at 21-41 (Polich Direct).
17 Recommendations at 26, ¶ 114 of the Findings of Fact.
18 *See id.* at 26, ¶¶ 114-115 of the Findings of Fact.
19 *Id.* at 26, ¶ 112 of the Findings of Fact.
20 *Id.* at 35, ¶ 155 of the Findings of Fact.
21 *Id.* at 35, ¶¶ 155, 158 of the Findings of Fact.
22 *See, e.g.*, Recommendations at 35, ¶ 157 of the Findings of Fact.

associated with Boswell Unit No. 4's hot reheat line,"[23] the Recommendations do not explicitly provide the specific dollar amount to be refunded to ratepayers. That number is, however, in the record. With respect to the Boswell 4 Forced Outage, Department witness Nancy A. Campbell concludes, and Minnesota Power does not contest, that the incremental cost increase for ratepayers was $4,482,456.[24] LPI, therefore, urges the Commission to order Minnesota Power to refund the full $4,482,456 plus interest to ratepayers for the Boswell 4 Forced Outage.

C. Because the Good Utility Practice Inquiry Requires a Two-Pronged Approach, the Commission Should Modify the ALJ's Conclusion That Minnesota Power's Handling of the Boswell 3 Forced Outage Was "Not Inconsistent" with Good Utility Practice

During the course of its efforts to repair the hydrogen leak in Boswell 3, Minnesota Power introduced seal oil into the generating unit, which eventually made its way to the phase bushings and caused them to overheat and fail.[25] The ALJ accurately described Minnesota Power's actions with respect to the seal oil and properly concluded that those actions were the cause of the Boswell 3 Forced Outage. The Recommendations also accurately detail Minnesota Power's process for addressing the hydrogen leak at Boswell Unit 3 and the specific testing process Minnesota Power undertook involving the introduction of "several barrels" of seal oil into the unit.[26] In particular, the ALJ correctly found that Minnesota Power "did not keep track of the amount of additional seal oil it allowed into the system versus the amount of oil it took out" and "did not inspect whether additional oil remained in the generator after completion of the hydrogen leak repairs."[27] While the costs associated with the hydrogen leak outage are not at issue,[28] the ALJ correctly determined that Minnesota Power's testing process, and specifically, the introduction of seal oil into the

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23 *Id.* at 35, ¶ 159 of the Findings of Fact.

24 Ex. 12 at 16 Table 2 (Campbell Direct). With regard to the Boswell 3 Forced Outage, Ms. Campbell also concludes that the incremental cost increase was approximately $1,764,695 for a collective total of $6,247,417 (excluding interest). Minnesota Power concurs with the Department's calculations. Ex. 17 at 2:21-27 (Oehlerking-Boes Rebuttal).

25 *See* Recommendations at 32-33, ¶¶ 142-145 of the Findings of Fact.

26 *See id.* at 28, ¶¶ 126-130 of the Findings of Fact. Ultimately, while taking issue with Minnesota Power's testing process, the Department investigation did not recommend any refund stemming from the hydrogen leak outage at Boswell Unit 3. *Id.* at 29, ¶ 131 of the Findings of Fact.

27 *Id.* at 29, ¶¶ 129, 130 of the Findings of Fact.

28 *Id.* at 29, ¶ 131 of the Findings of Fact.

generator, which eventually made its way to the bushings, caused the Boswell 3 Forced Outage due to overheating.[29] Specifically, the ALJ correctly found that

> 153. Minnesota Power's alternative theories of what caused the [Boswell 3 Forced Outage] are unpersuasive. The Administrative Law Judge notes that it is unlikely that three bushings would have suddenly failed simultaneously for any of the reasons theorized by Minnesota Power. Furthermore, statements from the General Electric report, and the timing of the failure soon after the bushings passed inspection makes a conclusion that the phase bushings failed because they overheated after being soaked with oil more likely than any of the potential causes posited by Minnesota Power.[30]

Despite these factual findings, the ALJ ultimately concluded that Minnesota Power made reasonable and prudent decisions in resolving the hydrogen leak and bushings failure.[31]

LPI appreciates the ALJ's thorough analysis of the Forced Outages and generally supports the factual findings with respect to Minnesota Power's actions and the causation of the Boswell 3 Forced Outage. However, LPI disagrees with the ALJ's ultimate legal conclusion that Minnesota Power's actions were consistent with Good Utility Practice. In particular, LPI asserts that Good Utility Practice would include measuring the amount of seal oil introduced to the generator and ensuring it was accounted for and the generator was free of oil prior to restarting the system. The ALJ's faulty conclusion appears to be the result of a misapplication of the Good Utility Practice standard, as discussed below.

1. Absence of an Industry Standard Does Not Relieve Minnesota Power of the Burden to Establish That It Followed Good Utility Practice

In reaching the determination that Minnesota Power's actions with respect to the Boswell 3 Forced Outage were consistent with Good Utility Practice, the ALJ appears to ground the relevant Findings of Fact in the absence of an "industry standard" from which to judge Minnesota

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[29] *See id.* at 31-34, ¶¶ 139-153 of the Findings of Fact. These findings detail Minnesota Power's investigation into the Boswell 3 Forced Outage, General Electric's investigation, including its report that was "replete with references to seal oil that [GE] located in the phase bushings and the potential for oil-soaked bushings to overheat and cause a ground fault," the Department's findings with regard to its maintenance practices, and Minnesota Power's alternative causation theories.

[30] *Id.* at 34, ¶ 153 of the Findings of Fact.

[31] *Id.* at 30, ¶ 135 and 34, ¶ 154 of the Findings of Fact.

Power's actions.[32] This analysis, however, is incomplete, because it does not consider the entirety of the Good Utility Practice standard. As is relevant here, Good Utility Practice means

> the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, *or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition*.[33]

Importantly, the Good Utility Practice standard contemplates a two-pronged analysis, allowing review in the context of both industry standards **or** under the exercise of reasonable judgment. Here, the ALJ's determination is centered around the lack of industry standards or guidelines addressing the hydrogen leak and Minnesota Power's subsequent repairs. In particular, the ALJ cited "the lack of a template for prudent, good utility practice in certain situations" and the fact that "seldom seen problems cannot be deemed to have a common industry practice."[34] LPI notes that Minnesota Power has the burden of proof in this proceeding[35] and failed to adduce evidence dictating a relevant industry standard that would apply to the hydrogen leak testing. LPI does not contest the ALJ's conclusion that there was no industry standard for addressing the hydrogen leak. However, the lack of such a standard does not relieve Minnesota Power of the obligation to exercise Good Utility Practice or its burden in this proceeding.

In such a scenario, the second prong of Good Utility Practice requires an analysis of whether Minnesota Power exercised "reasonable judgment" in light of the facts known at the time. This analysis is grounded in various considerations including timing, reliability, safety, and good business practices. Because the ALJ failed to consider the second prong of the Good Utility Practice Standard, LPI urges the Commission to modify Recommendation nos. 135, 154, and 156 to incorporate the reasonable judgment prong of the Good Utility Practice standard.

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32 *Id.* at 30, 34, ¶¶ 135, 154 of the Findings of Fact.
33 *Supra* n. 5 (emphasis added).
34 Recommendations at 30, ¶ 135 of the Findings of Fact.
35 *Supra* n. 12.

2. The Commission Should Apply the Reasonable Judgment Prong of the Good Utility Practice Standard to Find That the Boswell 3 Forced Outage Costs Were Not Reasonably and Prudently Incurred

The second prong of the Good Utility Practice standard requires Minnesota Power to demonstrate that its actions in introducing seal oil to resolve the Boswell Unit 3 hydrogen leak, which subsequently caused the Boswell 3 Forced Outage, comport with "the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition."[36] Neither the ALJ nor Minnesota Power point to evidence to satisfy the second prong of the Good Utility Practice test. To the contrary, the ALJ notes that: "In hindsight, it would have been better practice to measure the amount of oil that was pumped into the system."[37] But hindsight was not needed to prevent the phase bushings outage. The exercise of reasonable judgment in pouring oil into a generating unit such as Boswell 3 would dictate that one measure the amount of oil being introduced into the system and flowing out and ensure that such oil was not introduced to areas where it should not be, like the phase bushings.

Rather than address the second prong of the Good Utility Practice standard, Minnesota Power and the ALJ focused on the novelty of the hydrogen leak and Minnesota Power's ultimately successful efforts to repair the leak.[38] But Minnesota Power's success in repairing the leak does not insulate them from responsibility to exercise Good Utility Practice in doing so. The narrow question at issue here is: would the exercise of reasonable judgment dictate that Minnesota Power, in adding seal oil to an un-isolated portion of the generator, monitor how much oil was introduced into the generator and inspect where that oil migrated to after the repairs? As explained below, the answer to this question is undoubtedly "yes."

To properly satisfy the second part of the Good Utility Practice test, Minnesota Power's actions must be scrutinized under the reasonable judgment test in light of *good business practices, reliability, safety, and expedition* considerations. Minnesota Power's initial failure was one of basic recordkeeping. Minnesota Power failed to track and record the amount of oil poured into

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36 *Supra* n. 5.

37 Recommendations at 30, ¶ 135 of the Findings of Fact.

38 Minnesota Power Initial Br. at 54 (June 28, 2021) (eDocket No. 20216-175506-02).

the generator during the hydrogen leak testing. As a result, Minnesota Power did not know whether there was oil that was unaccounted for. This is not the first instance of Minnesota Power's failure to follow basic recordkeeping. Minnesota Power was also uncertain whether the specific bushings at issue were original from 1970 or replaced in 2001.[39] There is no excuse for this failure to keep records, which is a basic *good business practice*. Recording the amount of oil introduced into the system would have taken mere seconds and Minnesota Power offered no testimony to justify its failure to do so.

LPI respectfully disagrees with the ALJ's characterization of Minnesota Power's failure to do so as "in the moment" and one that could only be appreciated with "hindsight."[40] Minnesota Power is a sophisticated utility owner and operator tasked with maintaining a complex generating facility. The generator had already been shut down and there was no immediate safety concern. There is simply no excuse for Minnesota Power's failure to comport with a basic *good business practice* like recordkeeping, which would have taken mere seconds.[41] This is particularly so when the task at issue was pouring a substance into a portion of the generator that was not isolated and could allow the substance to reach other equipment.

Furthermore, Minnesota Power had multiple additional opportunities to catch the seal oil leak. There are, indeed, three independent failures on Minnesota Power's part here: (1) failure to record the amount of oil used so Minnesota Power did not know whether there was oil that was unaccounted for, (2) failure to properly configure an alarm so Minnesota Power did not detect the escaped oil,[42] and (3) failure to inspect the system prior to restarting, so Minnesota Power did not discover the oil-soaked bushings.[43] It is not clear why Minnesota Power did not check the alarm before pouring unregulated amounts of oil into its generator, but this was a clear failure to exercise due care. The last failure, again, was a failure of basic housekeeping—*another good business practice*—to inspect the system prior to restarting the unit.

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39 Recommendations at 34, ¶ 150 of the Findings of Fact; Ex. 14 at 35 (Undeland Rebuttal).

40 *Id.* at 30, ¶ 135 of the Findings of Fact.

41 As noted by the Department's expert, "good utility practice would be to keep track of the amount of seal oil used in any testing process." Ex. 10 at 44:18-19 (Polich Direct).

42 Recommendations at 34, ¶ 152 of the Findings of Fact.

43 *Id.* at 29, ¶ 130 of the Findings of Fact.

Given the record evidence of the potential risks associated with phase bushing failures,[44] coupled with industry knowledge that oil in the bushings can cause bushing failures,[45] LPI asserts that Minnesota Power's actions were also contrary to the *safety and reliability* concerns encompassed within the Good Utility Practice standard. As the operator of the unit, Minnesota Power is keenly aware of the day-to-day safety concerns of electric generators. Given the safety and reliability concerns with introducing additional seal oil into the generator, LPI does not believe Minnesota Power exercised reasonable judgment in its decision to not track the amount of seal oil introduced into Boswell Unit 3 or subsequently inspect the unit prior to placing it back in service.[46]

The ALJ erred by not adequately addressing this aspect of the Good Utility Practice standard in the Recommendations. Minnesota Power's actions did not reflect *good business practices* (such as recordkeeping or housekeeping) and were inconsistent with *safety and reliability*. *Expedition* was no barrier here as basic recordkeeping would have taken mere seconds. Given that Minnesota Power had the potential to discover the seal oil issue either through its own monitoring or by subsequent inspection, with seemingly little to no delay, it was unreasonable for the ALJ to conclude that Minnesota Power complied with the second prong of the Good Utility Practice standard.

In sum, LPI urges the Commission to modify Recommendation nos. 135, 154, and 156 with respect to the ALJ's Good Utility Practice conclusions related to the Boswell 3 Forced Outage as follows:

> 135. ~~The problems, analysis and actions related to the hydrogen gas leak provide an object lesson in the difficulty of evaluating maintenance prudence, practice, and expenditures on a case-by-case basis. The parties agree that hydrogen leaks are dangerous and~~

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[44] Recommendations at 30, ¶ 136 of the Findings of Fact (stating that bushing failures can start fires or damage the facility).

[45] *Id.* at 32-33, ¶¶ 142, 145 of the Findings of Fact; *citing* Ex. 10 at 47, RAP-16 at 3 (Polich Direct).

[46] With regard to the Good Utility Practice Standard, the ALJ also explained that "more simply, [a proxy for the standard] is whether Minnesota Power's practices…were reasonable and prudent. Prudent is defined as exercising good judgment or common sense and characterized by or resulting from care or wisdom in practical matters or planning for the future." *Id.* at 24, ¶ 106 of the Findings of Fact. LPI asserts that Minnesota Power's failure to track the quantity of seal oil it introduced into the generator or subsequently inspect for leaks is inconsistent with good judgment and common sense. It should be common sense to track the amount of any substance one introduces into a generating unit, and after doing so, to inspect that the substance stayed where one wanted it and did not migrate to other areas of the unit where it could cause damage. Here, Minnesota Power neither tracked nor inspected to ensure that the generating unit would not be jeopardized by its attempts to resolve the hydrogen leak.

~~require immediate action.~~ The hydrogen leak presented a unique puzzle such that GE, the original OEM, Power Plant Services with an ex-GE engineer on staff, and an external contractor that specializes in hydrogen leak location were not able to troubleshoot the source of the problem. These facts illustrate the lack of a template for prudent, good utility practice in certain situations. Unlike, for example, the frequency of certain system inspections, seldom seen problems cannot be deemed to have a common industry practice. In the absence of a template or industry standard, Minnesota Power's actions must be evaluated under the second prong of the Good Utility Practice standard. The second prong of the Good Utility Practice standard requires the exercise of reasonable judgment in light of the facts known at the time to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Applying the standard here, the exercise of reasonable judgment would have dictated that Minnesota Power ~~In hindsight, it would have been better practice to~~ measure the amount of oil that was pumped into the system and determine where that oil went prior to restarting the unit. Minnesota Power did not take actions consistent with good business practice, which would have included basic recordkeeping, such as recording the amount of oil introduced to the generator, and housekeeping, such as checking to ensure the alarm was working before introducing the oil and checking to make sure the generator was clear of oil before restarting operations. There were no safety and reliability barriers to taking such actions, as the generator was already offline and the hydrogen was not at risk of leaking, and indeed, safety and reliability concerns would dictate that Minnesota Power monitor the introduction of seal oil into an un-isolated portion of the generator to ensure it did not cause the type of outage that resulted here. Nor would there have been any sacrifice of cost or expedition, as such actions would have taken Minnesota Power mere minutes. Minnesota Power did not introduce evidence to the contrary and therefore, did not meet its burden to show that its actions were consistent with Good Utility Practice. ~~But in the moment, knowing that the barrier between dangerous hydrogen gas and the plant was seal oil, that seal oil resolved the leak, and without an industry or OEM protocol for the problem, it is reasonable to find that Minnesota Power made reasonable and prudent decisions in attempting to resolve the problem.~~

. . .

154. The Administrative Law Judge concludes that Minnesota Power did not make ~~made~~ reasonable and prudent decisions in addressing the phase bushing failure. The Administrative Law Judge agrees that the phase bushing failure was a consequence of

the oil that was added to the float valve to address the hydrogen gas leak. ~~However, with regard to the phase bushings, just as in responding to the hydrogen leak~~ While there may not have been an industry standard to address the hydrogen leak, the Company did not make~~made the best~~ reasonable decisions ~~it was able to make~~ based on the knowledge it had at the time. Good Utility Practice would have been to check the alarm before introducing oil into the generator, record the amount of oil introduced into the generator, and check whether oil remained in the generator prior to restarting the unit. Had Minnesota Power taken any one of these actions the outage could have been avoided. Minnesota Power did not do so and therefore, its actions were not reasonable and prudent. ~~There was no evidence that there was an industry standard for testing of the improperly configured alarm or a specific schedule for anything related to the bushings' failure. The problem resulted from a failure to consider every possible undesired consequence of the hydrogen leak repair but not from a failure to perform advised maintenance or failure to adhere to industry standards.~~

. . .

156. Based on the findings above, the Administrative Law Judge finds that Minnesota Power's ~~maintenance and inspection of~~ actions to resolve the hydrogen gas leak ~~and~~ led to the bushings failures and were ~~not~~ the result of a failure to adhere to good utility practice. Therefore, Minnesota Power's incremental forced outage costs associated with Boswell Unit No. 3's phase bushings were not reasonably and prudently incurred because they resulted from outages that likely could have been avoided with the exercise of reasonable judgment aligned with good utility practices. Accordingly, the expenses relating to the purchase of replacement power from third parties over and above Boswell's own generation costs should not be charged to customers and should be refunded along with interest.[47]

Though LPI agrees with a significant portion of the Recommendations, the ALJ erred by failing to consider the second part of the Good Utility Practice standard. Based on the foregoing analysis, LPI asserts that correctly applying the second prong of the Good Utility Practice standard can lead to no other conclusion but that Minnesota Power failed to exercise Good Utility Practice.

47 LPI's revisions to ¶¶ 135, 154, and 156 address the primary errors in the ALJ's report and are not intended to indicate acceptance of every other finding or conclusion. *See e.g.,* Recommendations at 2, ¶ 1 of the Summary of Recommendations, and 37, ¶ 5 of the Conclusions of Law.

Therefore, the Commission should modify the specific Findings in the Recommendations accordingly.

D. Policy Considerations Favor Denial of the Forced Outage Costs

While LPI asserts that the evidence in the record justifies a finding that Minnesota Power's actions were inconsistent with Good Utility Practice, application of the preponderance of the evidence standard in light of relevant policy considerations further supports denial of the costs associated with the Forced Outages. The ALJ correctly concluded that "Minnesota Power [bears] the burden to demonstrate by a preponderance of the evidence that its maintenance practices were consistent with good utility practice."[48] As previously explained by LPI, satisfaction of the preponderance of the evidence standard is different than that of a civil case, pursuant to the Minnesota Supreme Court's guidance stating that:

> The "weighing" by court in a civil case applying the "fair preponderance" standard involves a determination by the court whether the proponent of the conclusion has produced sufficient credible evidence to sustain that conclusion. *In contrast, the task of the MPUC is not so much concerned with the sufficiency and credibility of the evidence, as it is concerned with whether the evidence submitted, even if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission's statutory responsibility to enforce the state's public policy that retail consumers of utility services shall be furnished such services at reasonable rates*.[49]

As applied to this matter, given that the overall costs associated with the Forced Outages are undisputed,[50] Minnesota Power must demonstrate that it is just and reasonable for ratepayers to bear the associated costs.[51] This standard is also consistent with the ALJ's conclusion that

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48 Recommendations at 36, ¶ 3 of the Conclusions of Law.

49 *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987) (emphasis added). *See also* LPI Initial Br. at 4-6 (articulating that proper consideration of the Good Utility Practice standard includes whether it is just and reasonable for ratepayers to bear the associated costs).

50 *Supra* n. 24.

51 *In re Petition of N. States Power Co.*, 416 N.W.2d at 722. *See also* LPI Initial Br. at 4-6 (articulating that proper consideration of the Good Utility Practice standard includes whether it is just and reasonable for ratepayers to bear the associated costs).

Minnesota Power "always retains the burden of proving the reasonableness of costs [it] seeks to charge ratepayers."[52]

Granting Minnesota Power cost recovery of the Forced Outage costs is inconsistent with this standard and has negative policy implications. Regardless of the Commission's determination in this proceeding, Minnesota Power's shareholders will still receive a windfall, based on Minnesota Power's significant underspend on its allotted budget for generation maintenance. As demonstrated by the Department, during the relevant period, Minnesota Power underspent on its $42 million allotted maintenance budget by approximately $12.4 million, which is a benefit to shareholders.[53] It is undisputed that the amount in question in this proceeding is approximately $6,247,417 (plus interest).[54] As such, Minnesota Power's shareholders will receive a windfall of between approximately $6-$12.4 million (the low end assuming the recovery of approximately the full amount requested by the Department in this matter).

It is unreasonable for Minnesota Power and its shareholders to reap the benefits of its underspend when the record demonstrates significant questions with respect to its maintenance practices, as demonstrated above. In furtherance of its statutory mandate to ensure just and reasonable rates pursuant to Minn. Stat. § 216B.03, the Commission should instead seek to minimize additional ratepayer impacts by awarding a refund of the full amount of the costs associated with the Forced Outages, which, coincidentally, still results in a windfall for the Company's shareholders.

Denial of cost recovery also advances the Commission's existing policy of requiring utilities "to minimize unplanned facility outages through adequate maintenance…to guard against the possibility that a utility would seek to increase profits by skimping on maintenance—with the expectation that ratepayers would bear any financial consequences."[55] By awarding a full ratepayer refund of the expenses associated with the Forced Outages, the Commission will send a clear message to utilities that it will not tolerate mediocre maintenance practices at the expense of

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[52] Recommendations at 37, ¶ 4 of the Conclusions of Law; *citing In re Petition of N. States Power Co.*, 416 N.W.2d at 726.

[53] Ex. 12 at 9:7-18 (Campbell Direct).

[54] *Supra* n. 24.

[55] Referral Order at 3 (citations omitted).

Minnesota ratepayers. Therefore, LPI respectfully urges the Commission to deny Minnesota Power cost recovery of the entirety of the costs associated with the Forced Outages. As described above, this finding requires the Commission to adopt the recommendations of the ALJ with respect to the Boswell 4 Forced Outage and the causation of the Boswell 3 Forced Outage, while modifying the ALJ's Good Utility Practice conclusion on the Boswell 3 Forced Outage.

III. CONCLUSION

LPI appreciates the ALJ's efforts in preparing the detailed Recommendations and, as described above, supports the ALJ's findings, conclusions, and recommendations with respect to the Boswell 4 Forced Outage and the cause of the Boswell 3 Forced Outage. Notwithstanding these positions, LPI asserts that the ALJ did not properly apply the second prong of the Good Utility Practice standard to the Boswell 3 Forced Outage, and should have engaged in an analysis of whether Minnesota Power exercised reasonable judgment in light of various factors contained within the standard. Because the ALJ did not properly apply the Good Utility Practice standard, LPI respectfully requests that the Commission modify the ALJ's Good Utility Practice conclusion associated with the Boswell 3 Forced Outage and order Minnesota Power to refund ratepayers the complete $6,247,417 (plus interest) associated with the Forced Outages.

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Respectfully submitted,

STOEL RIVES LLP

/s/ Riley A. Conlin
Andrew P. Moratzka
Riley A. Conlin
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402
Tele: (612) 373-8800
Fax: (612) 373-8881

Jessica L. Bayles
1150 18th Street NW, Suite 325
Washington, DC 20036
Tele: (202) 398-1795
Fax: (202) 621-6394

ATTORNEYS FOR THE LARGE POWER INTERVENORS

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