

**STATE OF MINNESOTA
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Review of the July 2018-
December 2019 Annual Automatic
Adjustment Reports

MPUC Docket No. E-999/AA-20-171

OAH Docket No. 82-2500-37082

**MINNESOTA POWER'S REPLY TO THE DEPARTMENT OF COMMERCE'S AND
THE LARGE POWER INTERVENORS' EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE REPORT**

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MINNESOTA POWER

David R. Moeller
Senior Attorney and Director
of Regulatory Compliance
30 West Superior Street
Duluth, MN 55802
Telephone: (218) 723-3963

TAFT STETTINIUS &
HOLLISTER LLP

Kodi J. Verhalen
Matthew R. Brodin
Elizabeth M. Brama
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 977-8400

Attorneys on behalf of
Minnesota Power

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I. INTRODUCTION

Minnesota Power (the “Company”) respectfully submits this Reply to the Department of Commerce’s (“Department”) and the Large Power Intervenors’ (“LPI”) Exceptions to the Administrative Law Judge’s (“ALJ”) August 11, 2021 Findings of Fact, Conclusions of Law and Recommendation (“ALJ Report”). In this Reply, Minnesota Power addresses the issues raised in the Exceptions filed by the Department and LPI, but avoids reiterating in full arguments and record evidence included in the Company’s Exceptions filed on August 31, 2021, that support the actions Minnesota Power took in advance of and during the unplanned outages that occurred from July 1, 2018 and December 31, 2019 were consistent with good utility practice.

Both the Department and LPI argue that the ALJ erred by not applying the second prong of the good utility practice definition—whether Minnesota Power exercised reasonable judgment in light of the facts known at the time—when analyzing the phase bushing outage at Boswell Energy Center (“Boswell”) Unit 3 (“BEC3”). However, the ALJ Report explicitly addresses the reasonable judgment factor related to the phase bushing outage, and the ALJ determined that the evidence indicated that Minnesota Power’s decisions and actions were reasonable given the information known at the time. The ALJ indicated that although the phase bushing outage potentially could have been avoided based on the information available today with the benefit of hindsight, the good utility practice standard does not require Minnesota Power to consider and avoid every possible adverse outcome. Rather, given the information Minnesota Power had at the time and the lack of any available known industry practices related to the oil testing for the hydrogen gas leak, the ALJ correctly determined that the Company’s decisions and actions were not inconsistent with good utility practice.

LPI alone asserts that Minnesota Power should have to reimburse customers for the entirety of the unplanned outage costs incurred from July 1, 2018 through December 31, 2019, because to

allow otherwise would result in a “windfall for shareholders” on the basis that the Company underspent its generation maintenance budget compared to the test year in the last rate case. LPI provided no evidence or testimony in support of its position related to rate case test year expenses, but rather relied entirely upon the Department’s limited testimony on the subject.

As discussed in Minnesota Power’s Exceptions, underspending on maintenance was the Department’s original theory for requesting a refund, which it quickly abandoned in light of the evidence to the contrary presented by Minnesota Power. LPI refuses to acknowledge the undisputed evidence put forth by Minnesota Power demonstrating that the reductions in generation maintenance spending were due to known operational changes and plant closures that were entirely outside of the BEC3 and BEC4 systems at issue in this proceeding. Additionally, in making this recommendation, LPI ignores that rate case test year budgets are used as a representative level for setting rates, and that the actual amounts of individual cost components are expected to vary from year to year. The ALJ was correct to not even address this theory beyond including it in the background of why the Department initially sought a refund, and LPI’s attempt to revive this long disproven notion should be rejected.

II. REPLY TO THE DEPARTMENT’S EXCEPTIONS

A. The ALJ Correctly Applied the Good Utility Practice Standard in Concluding that Forced Outage Costs from the Phase Bushings Failure Were Reasonably and Prudently Incurred

The Department disagrees with the ALJ’s conclusion that Minnesota Power’s actions related to the hydrogen leak repair, which may have impacted the operational capabilities of the BEC3 phase bushing that failed in July 2018, were not inconsistent with good utility practice.¹ The Department did not disagree that the hydrogen leak repair presented a novel problem for which

¹ Department’s Exceptions at 2.

there were no established practices, methods, or actions approved by a significant portion of the utility industry.² According to the Department, however, the ALJ failed to address the second aspects of “good utility practice” by not analyzing whether Minnesota Power exercised reasonable judgment in light of the facts known at the time.

Contrary to the Department’s assertions, the ALJ did address the reasonable judgment aspect of good utility practice. The Department merely does not agree with the ALJ’s conclusion. Specifically, the ALJ concluded “that Minnesota Power made reasonable and prudent decisions in addressing the phase bushing failure” and “the Company made the best decisions it was able to make based on the knowledge it had at the time.”³ In support of that conclusion, the ALJ stated, “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.”⁴

The ALJ also recognized “the difficulty of evaluating maintenance prudence, practice, and expenditures on a case-by-case basis[,]” especially where there is a “lack of a template for prudent, good utility practice in certain situations.”⁵ Further, 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.”⁶ Finally, the ALJ continued, “without an industry or OEM protocol for

² *Id.* at 3.

³ ALJ Report at ¶ 154.

⁴ *Id.*

⁵ *Id.* at ¶ 135.

⁶ *Id.*

the problem, it is reasonable to find that Minnesota Power made reasonable and prudent decisions in attempting to resolve the problem.”⁷

The Department’s real concern is that the ALJ did not substitute the hindsight judgment of the Department’s expert, who has never visited Boswell or indicated any firsthand knowledge of repairing a hydrogen gas leak,⁸ for the judgments made by the BEC3 engineers and managers at the time of the hydrogen leak outage. In fact, there remains no evidence that the oil, while it did seep into the phase bushings, was the proximate cause of the BEC3 phase bushing failure.⁹ However, under the Department’s proposed ex post facto standard, a utility’s actions related to every outage that theoretically could have been avoided would be deemed inconsistent with good utility practice. That is not the standard for good utility practice.

Ultimately, the ALJ correctly determined that the Company’s actions—and inactions due to the failure to foresee every possible adverse consequence—related to the hydrogen gas leak troubleshooting and the phase bushing outage were reasonable and not outside the bounds of good utility practice based upon the information available at the time. This decision is supported by the

⁷ *Id.*

⁸ See Exs. 10 and 11, Schedule 1 (Polich Direct) (Public and Nonpublic); Ev. Hrg. Tr. at 51-55, 67 (Polich). Mr. Polich demonstrated his lack of expertise regarding the hydrogen system when he suggested that Minnesota Power should have immediately identified the float valve as a potential cause of the leak and tested it. Exs. 10 and 11 at 44-45 (Polich Direct) (Public and Nonpublic). The OEM and industry experts on the hydrogen system indicated that they had knowledge of only one other instance of a float valve being defective, so there was no reason to initially identify it as a likely source of the leak. Ex. 7 at 28-29, Schedule 4 at 9 (Undeland Direct). Additionally, they told Minnesota Power they knew of no tests that could be performed to determine whether the float valve was defective short of completely replacing it with a new one, which would have taken 15 weeks to procure. *Id.* at 29, Schedule 4 at 9.

⁹ Exs. 14 and 15 at 35 (Undeland Rebuttal) (Public and Nonpublic); Exs. 10 and 11, Schedule 15 at 7-8 (Polich Direct) (Public and Nonpublic).

record as well as the fact that “[h]istorically, even when there has been evidence of actual mistakes leading to outages, the Commission has not required refunds of forced outage costs.”¹⁰

B. Minnesota Power Generally Agrees with the Department’s Corrections and Clarifications

The Department requests that the Commission amend the ALJ Report to make certain corrections and clarifications to comport with the testimony and evidence.¹¹ Minnesota Power agrees with the clarifications of undisputed fact included in Findings 39 (correcting dates) and 72 (replacing “traverse” with “transverse”). However, Finding 30 is an accurate representation of the ALJ’s findings based upon the evidence presented, and need not be amended. While Minnesota Power agrees with the actual numbers inserted into Finding 159 by the Department, as no refund is appropriate at this time, such addition is not necessary.

III. REPLY TO LPI’S EXCEPTIONS

LPI’s Exceptions argue three main points: (1) the ALJ correctly determined that Minnesota Power failed to satisfy good utility practice with regard to the BEC4 hot reheat outage; (2) the ALJ incorrectly concluded that Minnesota Power’s handling of the BEC3 phase bushing outage was not inconsistent with good utility practice; and (3) policy considerations favor denial of the forced outage costs.¹² Minnesota Power’s Exceptions address LPI’s first point, so those arguments will not be repeated. The remaining two points are addressed below.

A. The ALJ Correctly Concluded that Minnesota Power’s Handling of the BEC3 Phase Bushing Outage Was Not Inconsistent with Good Utility Practice

Much like the Department, LPI argues that the ALJ failed to address the “reasonable judgment” prong of the good utility practice analysis.¹³ As discussed above, however, the ALJ

¹⁰ ALJ Report at ¶ 30.

¹¹ Department Exceptions at 7-9.

¹² LPI Exceptions at 7-10.

¹³ *Id.*

clearly did determine that Minnesota Power's decisions regarding the repair of the hydrogen leak were reasonable in light of the information known at the time. Thus, LPI's argument is not that the ALJ did not address the reasonable judgment issue, it is that the ALJ did not agree with LPI's conclusions on the issue.

LPI asserts that Minnesota Power's actions were inconsistent with good utility practice because it failed to follow basic recordkeeping when it did not take the required "mere seconds" to measure and record the amounts of oil added to and removed from the hydrogen system float trap.¹⁴ But LPI's conclusion is oversimplified, unsupported by the record, and entirely inaccurate.

LPI characterizes the actions Minnesota Power took to add oil to the float trap as "pouring" oil into the float trap.¹⁵ When Minnesota Power tested the float trap by adding seal oil, however, it did not literally pour barrels of oil into a closed system such that the amount could be easily measured. Rather, the oil levels in the float trap were increased using oil piped in from the integrated system.¹⁶ The oil level in the float trap was increased using oil from the air detrainning tank or the bearing oil header, which, as the diagram of the system shows, also supply oil to other interconnected systems within the facility, including the voluminous vacuum tank.¹⁷ Given the interconnected nature of all of the systems in the generator receiving oil from multiple tanks and direct inputs, and the absence of flow measurement equipment within the system, there was no practical way to precisely measure the amount of oil added to the float trap during diagnostic testing, as LPI suggests should have taken mere seconds to do.¹⁸ Hence, even if Minnesota Power had attempted to measure the amount of oil added to the float trap and integrated system, any such

¹⁴ *Id.*

¹⁵ LPI Exceptions at 9.

¹⁶ Ex. 7, Schedule 4 at 3 and 9 (Undeland Direct).

¹⁷ *Id.*

¹⁸ *See id.*; Exs. 10 and 11, Schedule 15 at 5 (Polich Direct) (Public and Nonpublic).

measurements would not have provided the simplistic scenario that LPI erroneously lays out in its Exceptions.

LPI also avers that Minnesota Power failed to comply with good utility practice because the alarm that would have notified BEC3 personnel that oil had overflowed the float trap was improperly configured.¹⁹ As noted above, however, “[t]here was no evidence that there was an industry standard for testing of the improperly configured alarm[,]” and “failure to consider every possible undesired consequence of the hydrogen leak repair” does not equate to actions inconsistent with good utility practice.²⁰

Finally, LPI claims that Minnesota Power’s actions were inconsistent with good utility practice because it failed to fully inspect the system prior to restarting the generator.²¹ LPI did not, however, cite to any evidence in the record regarding any industry standard that would have required inspection of the entire system, or even specifically the phase bushings, prior to restarting the generator. Instead, LPI refers to the need to perform an inspection as “basic housekeeping,”²² which could not be further from the truth, as explained above and as the ALJ recognized when preparing the ALJ Report.

Conducting inspections of the BEC3 generator is difficult and time consuming because many of the components are covered, sealed, and otherwise generally inaccessible. Further investigation of the covered and sealed phase bushings to ensure that no oil was present would have required a significant amount of time to take apart, inspect, and reassemble every component.²³ For the phase bushings, this would have required disassembly of components in

¹⁹ LPI Exceptions at 9.

²⁰ *Id.*

²¹ LPI Exceptions at 10.

²² *Id.* at 9.

²³ *See Id.*, Schedule 16 at 3-5.

which there was asbestos containing material.²⁴ Such an inspection, not contemplated to be necessary at the time based on the information known at the time, would have caused a significant extension of the hydrogen leak unplanned outage.²⁵

Given the information known at the time, Minnesota Power reasonably believed that it had removed the excess oil from the system through the liquid detector drain valve.²⁶ Boswell personnel noted no other signs that oil had entered the phase bushings and no further oil was migrating to the liquid detector valve.²⁷ Hence, Minnesota Power did not immediately identify the migration of oil from the overtopped float trap into the phase bushings because of a failure to consider and investigate every possible undesired consequence of the hydrogen leak repair, not because of a failure to follow good utility practice.

B. Policy Considerations Do Not Favor Denial of the Forced Outage Costs

LPI argues that allowing Minnesota Power to retain the unplanned outage replacement power costs collected as a result of the forced outages at issue would be inconsistent with Minnesota Power's burden of proof standard "in light of relevant policy considerations."²⁸ Specifically, LPI claims that:

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. It is undisputed that the amount in question in this proceeding is approximately \$6,247,417 (plus interest). As such, Minnesota Power's shareholders will receive a windfall of between approximately \$6-\$12.4 million (the low end assuming the recovery of

²⁴ *Id.*

²⁵ *See Id.*

²⁶ Exs. 10 and 11, Schedule 15 at 5 (Polich Direct) (Public and Nonpublic).

²⁷ *Id.*

²⁸ LPI Exceptions at 13.

approximately the full amount requested by the Department in this matter).²⁹

LPI did not offer any testimony or evidence in support of this claim. Instead, LPI's position is based upon the Department's oversimplified original theory that Minnesota Power underspent and underperformed generation maintenance and inspections in order to "pocket" the savings, which caused the unscheduled outages at issue. However, Minnesota Power's Direct Testimony and its responses to Department information requests (with each response also served on LPI) demonstrated that the reduction in overall generation maintenance spending was due to known operational differences and that there were no reductions in maintenance or inspection programs for the systems related to the outages.³⁰ Additionally, Minnesota Power explained that the test year budgets established during rate cases are meant to be reasonably representative of sales and expense, but are not meant to match exactly actual costs and revenues.³¹ Moreover, the Commission has regularly recognized that the amounts in a particular cost component are expected to fluctuate from the test year,³² and the Department concurred that "expenses approved in the test year are not intended to exactly reflect actual spending levels . . ."³³

Despite the Department's complete abandonment of its original theory after reviewing the evidence provided by the Company,³⁴ LPI has continued to ignore the facts and mischaracterize

²⁹ *Id.* at 14.

³⁰ Ex. 9 at 17, 20, 22-23 (Rostollan Direct); Ex. 6 at 11 (Poulter Direct); Ex. 5 at 15-20 (Simmons Direct); Exs. 14 and 15 at 17 (Undeland Rebuttal) (Public and Nonpublic).

³¹ Ex. 9 at 6-7 (Rostollan Direct).

³² *In re the Complaint of Myer Shark et al. Regarding Xcel Energy's Income Taxes*, Docket No. E, G-002/C-03-1871, ORDER AMENDING DOCKET TITLE AND DISMISSING COMPLAINT at 4 (Oct. 1, 2004); *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-16-664, Findings of Fact, Conclusions, and Order at 22 (Mar. 12, 2018) ("The goal in ratemaking is to establish a representative amount of costs to be included in rates prospectively, until the utility files another rate case."); *see also* Minn. Stat. § 216B.16.

³³ Exs. 12 and 13 at 24 (Campbell Direct) (Public and Nonpublic).

³⁴ *Id.* at 21-24.

the record in an attempt to justify its “policy” argument. Given that there is no evidence to support this theory, the Commission should reject LPI’s “policy” argument. Additionally, any “relevant policy considerations” in this case relate to whether Minnesota Power’s actions leading up to and during each of the identified forced outages from July 1, 2018 through December 31, 2019, were consistent with good utility practice. As discussed in detail in Minnesota Power’s Exceptions and this Reply, the evidence demonstrates that Minnesota Power’s actions were consistent with good utility practice and no refund is appropriate.

IV. CONCLUSION

For the reasons set forth in this Reply as well as the Company’s Exceptions, Minnesota Power respectfully requests that the Commission reject the Department and LPI’s Exceptions, except for those correcting typographical errors, and modify the ALJ’s Report consistent with the Company’s Exceptions.

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MINNESOTA POWER

David R. Moeller
Senior Attorney and
Director of Regulatory Compliance
30 West Superior Street
Duluth, MN 55802
Telephone: (218) 723-3963
dmoeller@allete.com

TAFT STETTINIUS & HOLLISTER LLP

/s/ Kodi J. Verhalen

Kodi J. Verhalen
Matthew R. Brodin
Elizabeth M. Brama
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 977-8400
KVerhalen@Taftlaw.com
MBrodin@Taftlaw.com
EBrama@Taftlaw.com

Attorneys on behalf of Minnesota Power