

**BEFORE THE MINNESOTA OFFICE OF
ADMINISTRATIVE HEARINGS**

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

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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

**THE LARGE POWER INTERVENORS' REPLY TO
EXCEPTIONS TO THE FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATIONS OF THE
ADMINISTRATIVE LAW JUDGE**

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The following constitutes the Reply to the Exceptions filed by Minnesota Power on August 31, 2021,¹ in response to the Administrative Law Judge (“ALJ”) report in this matter dated August 11, 2021 (the “Recommendations”),² 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

In referring this matter to the Minnesota Office of Administrative Hearings for a contested case before an ALJ, the Minnesota Public Utilities Commission (“Commission”) instructed parties to develop a factual record to determine “whether Minnesota Power’s forced outage costs for [the 2018-2019 automatic adjustment 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].”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 Throughout this proceeding and in its Exceptions, Minnesota Power argues that it has fully satisfied the Good Utility Practice standard.⁵ On the other hand, LPI

¹ Minnesota Power Exceptions to Administrative Law Judge Report (Aug. 31, 2021) (eDocket No. 20218-177596-02) (“Minnesota Power Exceptions” or “Exceptions”).

² Findings of Fact, Conclusions of Law, and Recommendations (Aug. 11, 2021) (eDocket No. 20218-177011-01).

³ 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”).

⁴ LPI clarifies that references to the Forced Outages are specific to the Boswell 3 Forced Outage and Boswell 4 Forced Outage, consistent with the Minnesota Department of Commerce, Division of Energy Resources’ (“Department”) positions seeking refunds associated with those outages and not the hydrogen leak. While the Department does not believe Minnesota Power exercised Good Utility Practice with respect to the hydrogen leak, the Department determined that Minnesota Power’s actions did not extend the length of that outage and therefore did not result in incremental cost increases for ratepayers. Ex. 10 at 41-48 (Polich Direct). Therefore, the hydrogen leak outage is not addressed in LPI’s briefing except to the extent the facts are relevant to the subsequent Boswell 3 Forced Outage. To be sure, LPI and the Department (and the ALJ) believe Minnesota Power’s actions during the hydrogen leak were the cause of the subsequent Boswell 3 Forced Outage. Recommendations at 34, ¶ 153 of the Findings of Fact.

⁵ See *infra* note 10.

and the Minnesota Department of Commerce, Division of Energy Resources contend that Minnesota Power's maintenance practices associated with the Forced Outages were inconsistent with Good Utility Practice and ratepayers are entitled to a refund of the incremental costs associated with the Forced Outages.

After review of the record, 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.⁶ 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.⁷ In its Exceptions, Minnesota Power seeks to have the Commission modify 30 plus findings contained within the Recommendations related to the Boswell 4 Forced Outage.⁸ As demonstrated herein, significantly altering the ALJ's determination on the Boswell 4 Forced Outage would be both inconsistent with the weight of the evidence submitted and the Commission's direction in this proceeding. LPI, therefore, urges the Commission to reject Minnesota Power's Exceptions and adopt the Recommendations subject to the slight revisions suggested by LPI and the Department.⁹

⁶ See Recommendations at 26, ¶¶ 113-15 of the Findings of Fact, 38, ¶¶ 1-2 of the Recommendations.

⁷ Recommendations at 34, ¶ 153 of the Findings of Fact. While the ALJ correctly determined that Minnesota Power's actions caused the Boswell 3 Forced Outage, the ALJ erred by incorrectly applying the Good Utility Practice standard in concluding that "Minnesota Power made reasonable and prudent decisions in attempting to resolve the [hydrogen leak] problem" at Boswell Unit 3. Exceptions to the Findings of Fact, Conclusions of Law, and Recommendations of the Administrative Law Judge Submitted by the Large Power Intervenors at 2 (Aug. 31, 2021) (eDocket No. 20218-177594-02) ("LPI Exceptions") (brackets in original; citation omitted).

⁸ See Minnesota Power Exceptions. LPI notes that both it and the Department seek very narrow modifications to the ALJ's conclusions in comparison to the wholesale changes suggested by Minnesota Power.

⁹ Both LPI and the Department advocate for narrowly modifying the Recommendations with respect to the ALJ's application of the Good Utility Practice standard pertaining to the Boswell 3 Forced Outage. Importantly, the ALJ correctly found that Minnesota Power's actions caused the Boswell 3 Forced Outage. However, the ALJ failed to apply the second prong of the Good Utility Practice analysis, and erred by concluding that Minnesota Power's actions were reasonable without an industry standard from which to benchmark. See Exceptions by the Department at 5-7 (Aug. 31, 2021) (eDocket No. 20218-177593-02).

II. ANALYSIS

A. **Minnesota Power's Inspection Practices Associated with the Boswell 4 Forced Outage Were Inconsistent with Good Utility Practice**

In its Exceptions, Minnesota Power contends that the ALJ erred in concluding that the Boswell 4 Forced Outage and associated maintenance practices were inconsistent with Good Utility Practice.¹⁰ As demonstrated herein, Minnesota Power's arguments neither satisfy its own affirmative burden to show that its maintenance practices were consistent with Good Utility Practice nor rebut reasonable evidence submitted by the Department and accepted by the ALJ affirmatively demonstrating Minnesota Power's noncompliance with the standard.

As a threshold matter, LPI reiterates that the Commission established the instant contested case in order to "thoroughly develop a full record addressing, at a minimum, whether Minnesota Power's forced outage costs for the period were reasonable and prudent."¹¹ The Commission also confirmed 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."¹² And the ALJ correctly described Minnesota Power's burden in the Recommendations.¹³ In accordance with Minnesota Power's affirmative burden, any perceived insufficiencies with the record must be construed against Minnesota Power.¹⁴

¹⁰ 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 (footnotes omitted).

¹¹ Referral Order at 5.

¹² *Id.* at 4.

¹³ See LPI Initial Brief at 4-6 (June 28, 2021) (eDocket No. 20216-175502-02) ("LPI Initial Br."); LPI Reply Brief at 2-3 (July 12, 2021) (eDocket No. 20217-176040-02) ("LPI Reply Br."); LPI Exceptions at 3-4.

¹⁴ It is undisputed that the outcome of this proceeding will impact or change rates. When a utility seeks a change of rates, it must satisfy the "just and reasonable" standard and, pursuant to Minn. Stat. § 216B.03, any doubt as to the sufficiency of the evidence must be resolved in favor of ratepayers. See LPI Initial Br. at 4-6.

1. The ALJ Correctly Concluded That Minnesota Power’s Boswell 4 Maintenance and Inspection Practices Did Not Comply with the Industry Standard

Minnesota Power alone bears the burden of proof in this matter and failed to adequately support an industry standard for purposes of making a Good Utility Practice determination. The Department, however, introduced evidence that Minnesota Power’s maintenance and inspection practices with respect to Boswell Unit 4 were inconsistent with the industry standard. The Department concluded that Minnesota Power failed to properly inspect the HRH piping and that this failure caused the Boswell 4 Forced Outage.¹⁵ The HRH system should have been inspected with ultrasonic examination every four to five years.¹⁶ The Department’s investigation found that, among other things, seam-welded pipe for high pressure and temperature steam (which is considered “high energy”) has been used by generating facilities for approximately 80 years, and by 2017, the Electric Power Research Institute (“EPRI”) had more than 42 studies on such pipe failures.¹⁷ During the hearing, the Department’s expert confirmed that “this type of high-energy piping failure is extremely well-known in our industry, it’s well documented, it’s well understood, and it is preventable.”¹⁸ This history led both EPRI and the American Society of Mechanical Engineers (“ASME”) to “recommend that 100% of seam-welded pipe used in high energy processes be inspected at least once every five years.”¹⁹ And, per an EPRI survey, almost 50% of respondents followed these guidelines related to ultrasonic flaw detection, to some degree.²⁰

On the other hand, Minnesota Power’s only attempt to establish an industry standard was unsworn statements from its contractor, Thielsch Engineering, Inc. (“Thielsch”).²¹ Minnesota Power argues that “Thielsch confirmed that Minnesota Power’s risk-based HEP inspection protocol that called for inspection of low risk areas, such as the vertical HRH line, every ten years

¹⁵ See generally Ex. 10 at 33-39 (Polich Direct).

¹⁶ *Id.* at 38:1-40:1.

¹⁷ *Id.* at 22:1-11.

¹⁸ Evidentiary Hearing Transcript (Vol.) 1 at 53:22-25 (Polich) (“Hearing Tr.”).

¹⁹ Ex. 10 at 22:3-11 (Polich Direct). Mr. Polich further clarified the applicability of the ASME recommendation by explaining that high-energy steam piping “will develop certain innate oxide layers on the surface of the piping [(rust)] ... [a]nd what the high velocity fluids do is they will strip that rust away exposing [bare] piping underneath causing erosion of that piping.” Hearing Tr. at 78:11-79:8 (Polich). This explanation demonstrates the applicability of ASME Code V-8.5.2, recommending examination at intervals “not to exceed 5 [years].” See Ex. 10 at 24:24-27 (Polich Direct).

²⁰ Ex. 14, PJU-1 at 33 (Undeland Rebuttal) (EPRI Guidelines).

²¹ Recommendations at 25, ¶ 110 of the Findings of Fact (citing Ex. 7 at 18 (Undeland Direct); Ex. 14 at 23, 27 (Undeland Rebuttal); Hearing Tr. at 24-29 (Undeland)).

and inspection of higher risk areas every two to five years was consistent with the practices of a significant portion of the utility industry.”²² As demonstrated by the Recommendations, the ALJ reasonably considered both Minnesota Power’s and the Department’s positions. With respect to Minnesota Power, the ALJ correctly concluded that

Minnesota Power retains the responsibility to ensure that advice it accepts from its contractor comports with good utility practice. Unsworn claims from its contractor that other utilities advised by the contractor have similar inspection schedules offers minimal support, because it is unreliable hearsay and the product of a feedback loop where Thielsch gives similar advice to its other power plant clients.^[23]

Demonstrating a thorough understanding of the record, the ALJ then considered the evidence proffered by the Department, noting that

the Department introduced expert testimony that a five-year inspection program was consistent with good utility practice. The Department’s expert supported his informed opinion with recommendations from ASME, guidelines from a utility trade organization, EPRI, and statements and conclusions from Minnesota Power’s own contractors..., [therefore the e]vidence in the record shows that it is likely that the hot reheat line failure could have been avoided had Minnesota Power inspected it more often.... Minnesota Power has not met its burden to show that good utility practice allowed it to wait ten years between full hot reheat line inspections....^[24]

Consistent with the Commission’s directive in this matter, the ALJ applied the facts introduced by Minnesota Power and the Department and concluded that the Department’s evidence was credible. In so doing, the ALJ determined that the relevant industry standard for the purposes of Good Utility Practice required that Minnesota Power inspect the HRH system on a five-year basis. Importantly, this conclusion also reiterates that it is Minnesota Power’s affirmative burden to show that its inspection practices were reasonable.

²² Minnesota Power Exceptions at 17-18.

²³ Recommendations at 25, ¶ 110 of the Findings of Fact.

²⁴ Recommendations at 25-26, ¶¶ 111, 113-14 of the Findings of Fact (footnotes omitted).

In its Exceptions, Minnesota Power makes myriad complaints that amount to little more than disgruntlement that it bears the burden of proof in this proceeding while offering no substantial evidence from which the Commission can reasonably rely upon to deviate from the ALJ's findings and conclusions with respect to the Boswell 4 Forced Outage. Relevant to the Commission's analysis here, Minn. Stat. § 14.62 requires that the Commission detail its reasons for deviating from the ALJ's Recommendations. Further, pursuant to Minn. Stat. § 14.69, the Commission's decision must be supported by "substantial evidence" to satisfy judicial review. Substantial evidence is defined as "evidence that a reasonable mind might accept as adequate," and expert testimony must be based on adequate foundation, which is more than "speculation or conjecture."²⁵ To be sure, Minnesota Power's hearsay statements from Thielsch do not satisfy this standard.

The closest evidence Minnesota Power produced of an industry standard was a hearsay statement from an unidentified consulting engineer at Thielsch that its other customers do not perform phased array ultrasonic testing on 100% of their high-energy piping system every five years.²⁶ This statement does not appear to be based on any formal survey conducted by Thielsch, but rather is an offhand comment (*i.e.*, amounts to "speculation or conjecture").²⁷ There is no indication of what testing Thielsch's customers do conduct or who its customers are or whether their systems can even be compared to Minnesota Power's systems. The ALJ correctly determined that "[u]nsworn claims from its contractor ... offer[] minimal support, because it is unreliable hearsay and the product of a feedback loop...."²⁸ In short, Minnesota Power's reliance on Thielsch was insufficient to carry its burden of proof.²⁹

²⁵ *Smith v. Carver County*, 931 N.W.2d 390, 398 (Minn. 2019) (stating that "[w]hen reviewing the factual findings [a judge] must affirm the findings unless they are clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted. Substantial evidence is evidence that a reasonable mind might accept as adequate. Further, where a dispute centers on the ... choice between two conflicting expert opinions, the [previous] choice between experts must be upheld unless the facts assumed by the expert in rendering his or her opinion are not supported by the evidence. A ... judge may rely on an expert opinion if it has an adequate factual foundation.... The expert opinion need only be based on enough facts to form a reasonable opinion that is not based on speculation or conjecture." (cleaned up; citations omitted)).

²⁶ Minnesota Power Exceptions at 14-16; Ex. 7 at 18:7-19:4 (Undeland Direct).

²⁷ *See, e.g.*, Ex. 7 at 18:7-17 (Undeland Direct); *see Smith*, 931 N.W.2d at 398.

²⁸ Recommendations at 25, ¶ 110 of the Findings of Fact.

²⁹ *Id.* Minn. R. 1400.7300, subp. 1 allows an ALJ to "admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs."

Minnesota Power complains that the Department should have informed them that hearsay from Thielsch was insufficient to meet its burden of proof.³⁰ Minnesota Power's attempt to shirk its duty to adequately support its evidence is puzzling. As was made abundantly clear in the Referral Order and by stakeholders, Minnesota Power alone bears the burden of proof in this proceeding.³¹ No stakeholder is obligated to assist Minnesota Power in satisfying its burden. On the other hand, it is entirely reasonable for stakeholders to point out deficiencies with Minnesota Power's case. The ALJ weighed the evidence put forth by the parties and determined that it offered minimal support because it was unreliable and the product of a feedback loop.³² As a result, the ALJ concluded that Minnesota Power failed to meet its burden.³³

Similarly, Minnesota Power's complaints about the sufficiency of the Department's evidence are irrelevant. In Exceptions, Minnesota Power attempts to contest the applicability of the Department's industry standard.³⁴ But this evidence was presented to the ALJ, who determined that the Department's articulation of an industry standard was persuasive. Indeed, though Minnesota Power seemingly implies that its evidence was not considered, the ALJ admitted all of the evidence, and assigned the appropriate weight to the industry standard evidence presented by both Minnesota Power and the Department. In so doing, the ALJ recognized that the Department put forth sufficient and reasonable evidence of an industry standard, including two industry guidelines and an associated survey. Minnesota Power did not offer credible evidence of an alternative standard and therefore failed to satisfy its burden of proof.

Based on the sufficiency of the evidence presented by the Department, LPI urges the Commission to adopt the ALJ's findings and conclusions on the relevant industry standard. Minnesota Power has not adduced a different industry standard sufficient to determine that its actions were consistent with Good Utility Practice,³⁵ and the Commission should sustain the ALJ's findings and conclusion on this point.

³⁰ Minnesota Power Exceptions at 15-16.

³¹ Referral Order at 5; *see, e.g.*, LPI Initial Br. at 4-6.

³² Recommendations at 25, ¶ 110 of the Findings of Fact.

³³ *Id.*

³⁴ Minnesota Power Exceptions at 6-9.

³⁵ Indeed, Minnesota Power stated that it "is unaware of any industry-wide source of information" from which it can rely upon. Minnesota Power Exceptions at 17.

2. Even in the Absence of an Industry Standard, Minnesota Power’s HRH Inspection Practices Were Inconsistent with the Second Prong of the Good Utility Practice Standard

Even if one were to conclude that there is insufficient evidence in the record to deduce a single industry standard, Minnesota Power’s inspection practices were not reasonable. The second prong of the Good Utility Practice standard requires the “exercise of reasonable judgment in light of the facts known at the time the decision was made, [and] could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition.”³⁶ As such, Minnesota Power must still demonstrate that its inspection practices reflected reasonable judgment.

Minnesota Power’s ten-year inspection schedule for the HRH lines at Boswell Unit 4 is unreasonable, based on readily available and demonstrably known information at the time. For example, industry knowledge, and Minnesota Power’s knowledge of the safety and reliability consequences of HRH line failures throughout the industry, demonstrate a ten-year inspection schedule is unreasonable. Indeed, EPRI had more than 42 studies on seam-welded pipe failures by 2017, and high-energy piping failure was well-known and preventable.³⁷ The record also contains evidence of the serious risks associated with HRH line failures, including extensive facility damage and loss of life,³⁸ which were known by Minnesota Power.³⁹

In addition, specific facts about Boswell Unit 4 should have prompted more regular inspection. The system at Boswell Unit 4 was approximately 39 years old,⁴⁰ and nearly all of the welds had exceeded their life fraction consumed values (meaning they had exceeded their usable life).⁴¹ Minnesota Power identified six other areas of the pipe that needed repairs in the course of its investigation after the failure and concluded that the entire piping system needed to be replaced.⁴² Indeed, Mr. Polich testified that Minnesota Power’s piping did not guarantee a leak

³⁶ *Supra* note 10.

³⁷ Recommendations at 16, ¶ 68 of the Findings of Fact; Ex. 10 at 22:1-11 (Polich Direct); Hearing Tr. at 53:22-25 (Polich).

³⁸ Recommendations at 16, ¶ 68 of the Findings of Fact; Ex. 10 at 22:7-9 (Polich Direct); LPI Initial Br. at 6.

³⁹ Recommendations at 16, ¶ 69 of the Findings of Fact (“Minnesota Power was aware of industry concerns surrounding hot reheat lines and noted that ‘HRH piping has been an on-going power generation topic for over 30 years.’” (citation omitted)); Hearing Tr. at 37:11-39:12 (Undeland).

⁴⁰ Ex. 7 at 14:5-9 (Undeland Direct).

⁴¹ Recommendations at 18, ¶ 79 of the Findings of Fact; Ex. 10 at 33:25-34:12 (Polich Direct).

⁴² Recommendations at 15, ¶ 64 and 18, ¶ 81 of the Findings of Fact.

before burst, meaning that a far more catastrophic result was only narrowly avoided.⁴³ Given the age and condition of the HRH line, Minnesota Power should have known that more frequent inspection was needed to ensure safety and reliability. Indeed, Structural Integrity Associates, Inc. noted that “it is difficult to understand how [the cracks] would not have been identified and reported previously.”⁴⁴ Had Minnesota Power inspected the pipe every five years as recommended, it likely would have discovered the cracks prior to an outage occurring.⁴⁵ Relying on Thielsch’s estimates, Mr. Polich believes that cracks in the Boswell 4 HRH piping likely appeared between 7.5-8.9 years prior to the rupture.⁴⁶

To be sure, the ALJ fully analyzed the reasonableness of Minnesota Power’s actions. In so doing, the ALJ explicitly recognized that Minnesota Power did not use reasonable judgment in establishing maintenance practices at Boswell Unit 4. Based on factors including age and safety, the ALJ found that “[i]t is reasonable and prudent to anticipate more frequent ... inspection and maintenance of any complexly engineered system for which good working order is critical for reliability and safety.”⁴⁷ Based on these findings, the ALJ concluded that “Minnesota Power should have inspected the hot reheat line more frequently based on the line’s age and potential for catastrophic failure”⁴⁸ and that “[t]he age of the line, near the end of its life, also supports the Department’s position that the line should have been fully inspected more often.”⁴⁹ LPI agrees with the ALJ’s findings and conclusions. Based on the age of the unit as well as evidence indicating that Minnesota Power should have identified cracks in the piping at an earlier stage, Minnesota Power’s failure to adapt its maintenance practices was unreasonable and fails to comply with the second prong of the Good Utility Practice standard.

Therefore, regardless of whether the Commission accepts the Department’s position on the relevant industry standard for inspections being five-year intervals, because Minnesota Power (1) fails to establish an industry standard or baseline of its own, and (2) does not affirmatively

⁴³ Ex. 10 at 33:21-23 (Polich Direct).

⁴⁴ *Id.* at 34:5-6 (Polich Direct).

⁴⁵ Recommendations at 26, ¶ 113 (“Evidence in the record shows that it is likely that the hot reheat line failure could have been avoided had Minnesota Power inspected it more often.”).

⁴⁶ Recommendations at 17, ¶ 72; Ex. 10 at 32:8-11 (Polich Direct). This fact was also given weight by the ALJ. *See* Recommendations at 25, ¶ 109 of the Findings of Fact.

⁴⁷ Recommendations at 25, ¶ 107 of the Findings of Fact.

⁴⁸ Recommendations at 25, ¶ 108 of the Findings of Fact.

⁴⁹ Recommendations at 26, ¶ 111 of the Findings of Fact.

demonstrate that its maintenance practices were reasonable in light of the facts known to it, it cannot satisfactorily meet its burden to show that its actions comported with Good Utility Practice. LPI, thus, encourages the Commission to adopt the ALJ's findings and conclusions with respect to the Boswell 4 Forced Outage.

B. Minnesota Power's Attempts to Exaggerate the Impacts of the ALJ's Boswell 4 Forced Outage Conclusions Are Neither Accurate nor Relevant

In its Exceptions, Minnesota Power argues that the ALJ's findings and conclusion with respect to the Boswell 4 Forced Outage will significantly impact "how Minnesota Power ... develop[s] and implement[s] maintenance and inspection programs for all generation facilities."⁵⁰ Among other things, Minnesota Power suggests that the ALJ's Recommendations will significantly increase costs as well as utilities' reliance on trade groups and other experts in developing maintenance programs.⁵¹ Minnesota Power's attempts to characterize this matter as one that has sweeping policy and cost implications should be ignored for the following reasons.

First, neither the ALJ nor the other parties suggest that Minnesota Power's generic maintenance practices are generally defective. Per the Commission's direction for an examination, the Department and ALJ merely concluded that Minnesota Power's HRH line inspection practices did not conform with Good Utility Practice. This conclusion does not require Minnesota Power to engage other experts: it requires Minnesota Power to simply inspect its HRH line system more frequently. Minnesota Power's alarmist comments about not being able to rely on information provided by experts and plant personnel is baseless and should be dismissed.

Second, despite its claims that inspections are cost prohibitive, Minnesota Power has not reliably demonstrated that the cost of a five-year inspection program is unduly burdensome.⁵² Indeed, Minnesota Power's complaints about the cost-prohibitive nature of the inspection practices are puzzling given its earlier confirmation that "[t]he cost of the inspection protocol is irrelevant to [the industry standard of the Good Utility Practice] inquiry."⁵³ The Department submitted evidence that the cost of the inspection could be as low as \$35,000.⁵⁴ Minnesota Power claims to

⁵⁰ Minnesota Power Exceptions at 29.

⁵¹ *Id.* at 24-30.

⁵² *See, e.g.*, Recommendations at 23, ¶ 101 of the Findings of Fact.

⁵³ Minnesota Power Exceptions at 24.

⁵⁴ Recommendations at 23, ¶ 99 of the Findings of Fact.

have inspected the system in 2010,⁵⁵ so it should have been easy enough for it to produce evidence of the cost of such an inspection. Minnesota Power did not do so, choosing instead to make unsupported claims that the cost would be more than \$5 million.⁵⁶ While there is no specific evidence in the record to support the \$5 million cost claimed by Minnesota Power, even a cost that high may have been reasonable, when spread out over five years, in light of the risk to life and property. To be sure, this amount is dwarfed by the \$12.5 million of unspent O&M in the Company's maintenance budget.

Finally, regardless of the veracity of Minnesota Power's statements, these concerns are beyond the scope of this proceeding. Here, the Commission directed parties to address the narrow question of Minnesota Power's O&M practices as they related to the Forced Outages. Based on the evidence submitted, the ALJ reasonably concluded that Minnesota Power did not comply with Good Utility Practice with respect to the Boswell 4 Forced Outage. As articulated herein, LPI urges the Commission to adopt the ALJ's conclusions in this respect. If, however, Minnesota Power truly believes the outcome of this docket will require significant expenditures, the proper venue to address any increased expenses is a general rate case. To overanalyze these claims now is beyond the scope of the Referral Order, and LPI urges the Commission to disregard Minnesota Power's attempt to introduce those issues into this proceeding.

III. CONCLUSION

LPI appreciates the opportunity to submit this Reply to the Exceptions submitted by Minnesota Power. To be clear, consistent with the Commission's Referral Order, LPI, the Department, Minnesota Power, and the ALJ have developed a thorough record to address the Commission's requests. The record reflects that Minnesota Power failed to carry its burden to adduce an industry standard by which to measure its inspection practices with respect to the HRH line. The Department, however, did present clear evidence of an industry standard of inspections every five years. Minnesota Power's maintenance practices fell far short of this. Even in the absence of an industry standard, Minnesota Power did not demonstrate that its maintenance practices reflected reasonable judgment in light of the age and condition of the HRH line, the

⁵⁵ Recommendations at 15, ¶ 65 of the Findings of Fact.

⁵⁶ Recommendations at 23, ¶ 101 of the Finding of Fact.

industry history of such failures, and the potential consequences to life and property from a failure. The ALJ correctly concluded that Minnesota Power's actions did not reflect Good Utility Practice and therefore Minnesota Power should be required to refund the Boswell 4 Forced Outage costs. Minnesota Power has not met its affirmative burden in this proceeding and cannot justify its Exceptions to the Recommendations. Therefore, LPI respectfully requests that the Commission ignore the requests put forth by Minnesota Power in its Exceptions, and accept the Recommendations of the ALJ with respect to the Boswell 4 Forced Outage.

Dated: September 10, 2021

Respectfully submitted,

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