

Staff Briefing Papers

Meeting Date	May 12, 2022	Agenda Item **3
Party	Institute for Local Self-Reliance and Vote Solar (ILSR/VS)	
Docket No.	<p>E-002/RP-19-368 In the Matter of Xcel Energy’s 2020-2034 Integrated Resource Plan</p> <p>E-015/RP-21-33 In the Matter of Minnesota Power’s 2021-2035 Integrated Resource Plan</p> <p>E-017/RP-21-339 In the Matter of Otter Tail Power Company’s 2022-2036 Integrated Resource Plan</p>	
Issues	<p>What actions should the Commission take on the Institute for Local Self-Reliance and Vote Solar (ILSR/VS) request to order public utilities subject to the Commission’s resource planning requirements to acquire EnCompass modeling licenses for intervening organizations in resource plan dockets?</p> <p>Should the ILSR/VS request be moved to a separate docket or be addressed in individual resource plan dockets?</p>	
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Relevant Documents

Date

Institute for Local Self-Reliance and Vote Solar, <i>Petition</i>	November 2, 2021
Citizens Utility Board of Minnesota, <i>Comments</i>	December 28, 2021
Minnesota Power, <i>Comments</i>	December 28, 2021

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**

Date

Otter Tail Power, <i>Comments</i>	December 29, 2021
Xcel Energy, <i>Comments</i>	December 30, 2021
Office of the Attorney General, <i>Letter</i>	December 30, 2021
Minnesota Large Industrial Group, <i>Comments</i>	December 30, 2021
Department of Commerce, <i>Comments</i>	December 30, 2021
Community Power, <i>Comments</i>	January 3, 2022
Institute for Local Self-Reliance and Vote Solar, <i>Reply Comments</i>	January 10, 2022
Minnesota Power, <i>Reply Comments</i>	January 10, 2022
Xcel Energy, <i>Reply Comments</i>	January 10, 2022

I. Statement of the Issues

What actions should the Commission take on the Institute for Local Self-Reliance and Vote Solar (ILSR/VS) request to order public utilities subject to the Commission's resource planning requirements to acquire EnCompass modeling licenses for intervening organizations in resource plan dockets?

Should the ILSR/VS request be moved to a separate docket or be addressed in individual resource plan dockets?

II. Background

On November 2, 2021, ILSR/VS filed a petition requesting the Commission order public utilities to acquire EnCompass modeling licenses for intervening organizations and provide modeling inputs, outputs, etc. without a data request. However, given that the petition was filed roughly two weeks after Supplemental Comments were filed in Xcel's IRP (the Supplemental Comment period closed on October 15, 2021), staff decided to bifurcate the request by first soliciting comments on the appropriate process, with the intention to later solicit comments on the merits.

While ILSR/VS stated its request would first apply to Minnesota Power's (MP) IRP, not Xcel's, the request was filed in Xcel's, MP's, and Otter Tail's pending IRP dockets; thus, staff hoped to avoid confusing Xcel's IRP and further delaying MP's IRP¹ by asking parties for guidance on whether intervenor modeling costs should be part of a separate docket or in pending or future IRPs.

As a result of this approach, the Commission's decision at this stage is mostly procedural, although the Commission can decide whether it wishes to further explore the merits or not. ILSR/VS stated in Reply Comments that it supported a recommendation from the Citizens Utility Board (CUB) to consider its petition in a separate docket with the aim of a final Commission order prior to January 1, 2023.

III. ILSR and Vote Solar November 2, 2021 Petition

ILSR/VS's petition emphasized both the critical role capacity expansion modeling, or CEM, plays in the IRP process and the disparity in modeling access. ILSR/VS explained that CEM outcomes are the primary quantitative evidence supporting a preferred resource plan, but licenses for CEM software can be prohibitively expensive. Consequently, intervening organizations – typically nonprofits – must seek funds from public donations and other sources of philanthropy to ensure the public interest is protected. ILSR/VS raised some challenges that intervenors often confront in IRP proceedings, including:

¹ On Friday, October 29, 2021, the Commission received a Fifth Request for Extension of Time to File Comments on MP's IRP. ILSR/VS filed its petition on Tuesday, November 2. The Commission ultimately granted the Fifth Extension on Wednesday, November 3. Staff was concerned about the inevitability of further delays if the Commission issued a Notice of Comment on the merits of the ILSR/VS petition shortly thereafter.

- If intervenors can only afford a single license for modeling software, when should it be purchased to provide adequate time for review but also the most recent data?
- What happens if the Commission or utility submits supplementary information during or after an intervenor's modeling license period?
- How many groups must share model licensing costs (and compensation for modeling experts) so that it is affordable?

According to ILSR/VS, it would be in ratepayers' interests if intervenors were provided with access to the data used to create an expansion plan. In part, this is because utility customers are placed at great risk if modeling inputs are unreasonable, or if scenarios are poorly designed. In addition, since their shareholders are rewarded by large capital expenditures, investor-owned utilities have an inherent conflict of shareholder and customer interests in resource planning; for instance, a model can be manipulated to suggest greater capital expenditures are least-cost relative to investments in energy efficiency or customer-sited solar. Thus, affordable and transparent access to modeling software improves transparency and serves as a check against potential utility bias, which leads to better outcomes for ratepayers.

ILSR/VS then provided two examples where state commissions are making modeling software more accessible to stakeholders by providing free software licenses. The Michigan Public Service Commission recently approved a settlement agreement between the Indiana Michigan Power Company and intervenors regarding the utility's IRP. The South Carolina Public Service Commission ordered Dominion Energy to negotiate a discounted, project-based licensing fee to absorb the cost of licensing fees for intervenors. ILSR/VS request the Minnesota Commission similarly "establish an expectation that non-utility parties will receive free access to modeling software licenses so that they can fully vet the resource planning scenarios being presented for decision."²

ILSR/VS continued that testimony from the Michigan and South Carolina cases emphasized that ensuring intervenors have equal access to the modeling process lead to better long-term outcomes, and the ability to license the models at a reasonable cost is a key ingredient in making those models transparent.³

For these reasons, ILSR/VS requests "that the Commission order public utilities subject to the Commission's resource planning requirements to acquire EnCompass modeling licenses for intervening organizations in resource plan dockets, beginning with Minnesota Power." Second, ILSR/VS requests the Commission require utilities "to provide, without a data request, modeling inputs, including settings, and outputs, assumptions, any post-processing spreadsheets, and the model manual."

IV. Parties' Comments

The following parties filed comments on ILSR/VS's request:

² ILSR/VS petition, p. 3.

³ ILSR/VS petition, p. 2.

- State Agencies
 - Department of Commerce
 - Office of the Attorney General
- Utilities (organized by date of most recent IRP filing)
 - Xcel Energy
 - Minnesota Power
 - Otter Tail Power
- Organizations
 - CUB
 - Minnesota Large Industrial Group (MLIG)
 - Community Power
- Public Comment
 - City of Minneapolis
- Reply Comments
 - ILSR/VS
 - Minnesota Power
 - Xcel Energy

In general, the Agencies believe more information is required to approve the ILSR/VS request, and they discussed whether the request meets the statutory requirements of the intervenor compensation statute,⁴ which allows the Commission to award funds in a general rate case proceeding.

The Utilities opposed the request, although Xcel stated in Reply Comments that it could be open to further review, but only with substantially more information provided by ILSR/VS.

The Organizations supported the request; however, while CUB and Community Power strongly supported the petition and discussed ratepayer benefits, transparency, etc., MLIG expressed general support and stated it would provide more substantive comments in ensuing comment periods.

The City of Minneapolis supported the request for Xcel's IRP but did not take a position on statewide adoption since its geography is served exclusively by Xcel.

Below, staff groups the parties' positions by the "Agencies" (Department and OAG), "Utilities" (Xcel, MP, and Otter Tail), and "Organizations" (CUB, Community Power, MLIG). Staff emphasizes that each party filed comments independently, so they should not be read as joint comments; staff organized the comments in this way because parties under each group expressed views that were generally aligned.

⁴ Minn. Stat. §216B.16, subd. 10

A. Agencies

1. Department

The Department recommends the Commission deny ILSR/VS's request without prejudice due to insufficient information in ILSR/VS's petition; however, because the Department welcomes the participation of all stakeholders in IRP and other proceedings, the Department recommends the Commission find that ILSR/VS may refile their petition at a later date. Due to the time required to prepare for an IRP, the Department recommends that a revised petition be filed no later than four months prior to Xcel's, MP's, and Otter Tail next IRPs.

In addition, the Department recommends that any filing requesting compensation or payment for a modeling license or other resources shall include the following information:

- a) A discussion of the rate case intervenor compensation statute, as well as any relevant statutes, rules, or other legal considerations that must be considered in such a request;
- b) A full list of the expenses ILSR/VS are requesting the Commission order the utilities to pay for, the estimated dollar amounts for each, and a cost-benefit analysis, including non-monetary benefits and costs, demonstrating that benefits exceed costs;
- c) An explanation of how the Encompass license could be used in other jurisdictions' proceedings, and a proposal to share costs with those proceedings; and
- d) Further explanation on the criteria the Commission should use to decide on the merits of these petitions.

Upon receiving a revised petition, the Department recommends the Commission issue a notice requesting comments on the criteria the Commission should use to issue a decision on the merits of the request, as well as any other topics the Executive Secretary deems necessary to build the record.

The Department's comments point to a number of areas that require further detail, and they identify a need for the Commission to establish the criteria it would need to make a decision on the merits of ILSR/VS's revised petition. In addition to the relationship to the rate case intervenor compensation statute noted above, the Department identified areas where more information should be required in a revised petition:

- While ILSR/VS stated that modeling software can be "prohibitively expensive," ILSR/VS did not provide a cost estimate, and the license is generally not the most expensive component; for example, retaining a modeler and/or computers necessary to run the model can also be prohibitively expensive.
- ILSR/VS did not state whether each utility should purchase licenses for each intervenor, if one license is to be purchased and shared by intervenors, or if there are limits on the number of licenses to be acquired.
- It not clear whether utilities should pay for these costs in the currently pending IRPs, or for the yet-to-be scheduled IRPs.

The Department suggests that the revised petition be filed no later than four months prior to each utility's next IRP. This is because if a party obtains a license and modeler, it may take 6-12 months for the modeler to learn EnCompass, become familiar with each utility's modeling processes, conduct new modeling runs, and file comments (Initial Comments are filed four months after an IRP petition).

Regarding ILSR/VS's request that utilities provide certain data without an Information Request, the Department again suggests that this should be taken up prior to a utility's IRP filing, so the utility can provide all information directed by the Commission in its initial filing.

2. Office of the Attorney General

The OAG stated that the ILSR/VS request "raises complex procedural and administrative questions that should be considered in their own docket."⁵ For example, the OAG suggested the Commission consider whether ILSR/VS's request meets the statutory requirements of the intervenor compensation statute, and if it does not, the Commission should consider under what authority it is considering the petition and what standards it will use to evaluate the petition.

Additionally, the benefits of intervention must be carefully weighed against its costs to ratepayers, and it is not currently known which intervenors may receive compensation. There is also no clear limit to the scope or breadth of intervenor compensation in IRPs. With no defined scope, ratepayers could pay modeling costs for future intervenors that might actively advocate against their interests.

The OAG further noted that ratepayers already pay millions of dollars in general rate case costs each year. The Commission should consider whether utilities should be required to pay some or all IRP intervenor compensation, instead of passing that cost on to ratepayers.

B. Utilities

As noted above, the Utilities (Xcel, MP, and Otter Tail) opposed ILSR/VS's request. Table 1 below lists concerns the Utilities raised in their comments. Common responses were that intervening organizations already use CEM to examine utility IRPs, utilities engage stakeholders to help develop their modeling assumptions, the intervenor compensation statute applies to rate cases and not IRPs, and intervenor compensation in IRP should be addressed by the legislature.

⁵ OAG comments, p. 2.

Table 1. Utility Responses to ILSR/VS's Request

Utility	Responses
Xcel	<ul style="list-style-type: none"> • There is no clear statutory authority, precedent, or consensus for utility funding of intervening organizations outside of general rate case proceedings. • Stakeholder engagement and public participation in Xcel's IRP was robust and unprecedented. • Generating and interpreting credible modeling results requires specialized experience and overlaps with the role of the Department. • Public transparency in the IRP process is not equivalent to providing unencumbered modeling access for intervenors that may represent a special interest or hold a conflict of interest. • Utility funding of intervenors' modeling activities should be addressed in each utility's separate IRP hearings.
MP	<ul style="list-style-type: none"> • There is an existing process for intervenor compensation. • Many intervenors are already utilizing EnCompass. • Stakeholder engagement and public participation prior to MP's 2021 IRP filing was incredibly robust, including input on EnCompass modeling assumptions and inputs.
OTP	<ul style="list-style-type: none"> • Funding borne by Minnesota customers is appropriately handled at the Legislature and not in this regulatory proceeding. • Intervening parties with the software are already participants. • ILSR is not a party to Otter Tail's existing proceeding and Otter Tail is not aware of ILSR participating in any past Otter Tail IRP proceedings. • Minnesota customers should not pay for such modeling software that can be used to conduct modeling in other jurisdictions. • Minnesota customers funding the modeling software for an additional intervenor unnecessarily expands and creates a longer IRP process at no or a minimal value added to Otter Tail's Minnesota customers.

Further comments from each utility are discussed below, including the status of their current IRPs.

1. Xcel

Xcel stated that, while it recognizes the importance of intervenor participation in dockets other than general rate cases, there is no clear statutory authority, precedent, or consensus to support ILSR/VS's request. Xcel pointed to the limited circumstances related to intervenor compensation under Minn. Stat. § 216B.16:

Subd. 10. **Intervenor compensation.**

(a) A nonprofit organization or an individual granted formal intervenor status by the commission is eligible to receive compensation.

(b) The commission may order a utility to compensate all or part of an eligible intervenor's reasonable costs of participation in a general rate case that comes before the commission when the commission finds that the intervenor has materially assisted the commission's deliberation and when a lack of compensation would present financial hardship to the intervenor. Compensation may not exceed \$50,000 for a single intervenor in any proceeding. For the purpose of this subdivision, "materially assisted" means that the intervenor's participation and presentation was useful and seriously considered, or otherwise substantially contributed to the commission's deliberations in the proceeding.

Xcel believes ILSR/VS's proposal would be best handled by a legislative solution, and Xcel has supported legislation in recent years that would expand the matters for which certain intervenors could be compensated for their participation.⁶ Xcel also agreed to provide funding for the Commission's investigation into the impacts from Winter Storm Uri; however, Xcel noted in that instance one party refused utility funding due to a potential conflict of interest.

Xcel also raised confidentiality concerns. According to Xcel, "there could be unforeseen implications in providing unrestricted access to a model, inputs, and assumptions for intervenors that may represent a special interest group or a potential conflict of interest, either with board members or funders that represent a political interest, potential competitors, third-party developers, and/or future RFP bidders. Such modeling information could provide them with an unfair market advantage that may not be in the public interest and could ultimately cause financial harm to customers."⁷ Xcel continued that such access to modeling information from Minnesota's three investor-owned utilities could "give an entity with market interests unprecedented access to otherwise confidential contract and operational information for most of MISO Zone 1."⁸

Xcel's IRP was approved on April 15, 2022, and the Commission's order established a February 1, 2024 deadline for Xcel to file its next IRP.

2. Minnesota Power

MP highlighted the robust stakeholder process leading up to filing its 2021 IRP. MP initiated a stakeholder process 18 months prior to filing the 2021 IRP that "brought diverse groups together to share insights and engaged host community members not normally represented at the Commission."⁹ This group included over 70 diverse stakeholders representing various customer groups, environmental organizations, economic development entities, local government, industry, the host community, and others. MP noted that the stakeholder group

⁶ See H.R. 1289, S.F. 1621, available at:

https://www.revisor.mn.gov/bills/text.php?number=SF1621&version=latest&session=ls92&session_year=2021&session_number=0&format=pdf

⁷ Xcel comments, pp. 4-5.

⁸ Xcel comments, p. 5.

⁹ MP comments, p. 2.

developed a Modeling Subcommittee, which included Vote Solar, although Vote Solar is not a formal intervenor in MP's IRP proceeding.

MP filed its IRP on February 1, 2021. Initial Comments were received on April 29, 2022, and the deadline for filing Reply Comments is June 29, 2022.

3. Otter Tail Power

Otter Tail mentioned the multi-jurisdictional aspect of its modeling, and Minnesota customers should not pay for modeling software than can be used to conduct modeling in other jurisdictions. Also, Otter Tail noted that having Minnesota customers fund modeling software for additional intervenors does not create meaningful value for Minnesota ratepayers. Also, intervening parties with modeling software are already participants in IRP proceedings; however, ILSR is not a party to Otter Tail's existing proceedings IRP nor has been in its past IRPs.

Otter Tail filed its IRP on September 1, 2021. The deadline for filing Initial Comments is June 13, 2022.

C. Organizations

CUB explained that intervenor involvement can help prevent utilities from prioritizing shareholder interests over ratepayer interests and provides a check on utilities' modeling methodologies and results. However, intervening in IRP proceedings is a resource-intensive, costly undertaking, and CUB and other nonprofit advocates often weigh whether they are able to participate in multiple complex dockets underway before the Commission. If the Commission requires utilities to provide modeling licenses to parties granted intervenor status, intervenors could more effectively participate in the planning process by saving costs associated with acquiring their own licenses.

Similarly, if the Commission requires utilities to proactively provide intervenors modeling inputs and settings, outputs, assumptions, post-processing spreadsheets, and model manuals, then intervenors and utilities could avoid the unnecessary friction, costs, and delays associated with requesting and providing that information through a resource-intensive discovery process.

CUB recommends the Commission's order in this matter apply consistently to all public utilities. The Commission could the petition in a separate docket, which would allow for the Commission to take such action in a single order, or the Commission could take up the petition in each of the above-referenced dockets (Xcel's, MP's, and Otter Tail's open IRPs).

Community Power argued that it is critical to consider multiple perspectives that capture different visions, assumptions, and outcomes. Ratepayers will be able to avoid billions of dollars in unnecessary spending, and the energy system can be more affordable, if intervenors are provided with equal access to the same modeling software utilities use to support large capital expenditures. Xcel's recent IRP process demonstrated that better outcomes can be achieved as a result of competitive modeling conducted by the CUB, Sierra Club, and Fresh Energy. In addition, as demonstrated in the near-simultaneous 2021 rate increase requests

from Xcel-gas, Xcel-electric, CenterPoint, and MP, alongside several “stay-out” proposals, utilities need foundational checks on their spending, which must come at the planning level.

MLIG generally supports the request but defers to the Commission, utilities, and other stakeholders on the appropriate procedural path forward; MLIG reserves the right to participate in whatever procedural process the Commission chooses to pursue.

D. Reply Comments

ILSR/VS, MP, and Xcel filed Reply Comments. ILSR/VS supports CUB’s suggestion to consider its petition **in its own docket** with the aim of a final order **prior to January 1, 2023**. (*Emphasis added by staff.*) ILSR/VS did not oppose the questions raised by commenters and stated that “most of the concerns and issues raised by commenters can be resolved through further clarification or compromise.”

MP supported the Department and OAG’s questions about ILSR/VS’s request, as well as other issues raised by commenters, and stated these questions “should be answered prior to the Commission considering whether intervenor compensation in the form of EnCompass modeling access should be granted.” MP maintained its position that “ILSR/VS’s request should not be approved, and in particular should not be approved for Minnesota Power’s 2021 IRP.”

Xcel also maintained its position that ILSR/VS’s petition should not be approved; however, if the Commission goes in the direction recommended by the Department and the OAG, Xcel added that the following areas should be addressed:

- Proposed processes and requirements for intervenor compensation, data access, and modeling proposals;
- How the proposal is permissible under Minn. Stat. §216B.16 or other pertinent statutes;
- How third-party modeling materially assists IRP proceedings;
- Best practices or examples that demonstrate how third-party modeling can improve and/or expedite an IRP proceeding without resulting in further delays, confusion, and costs;
- Proposed threshold for a “material” contribution from intervenors receiving funding and/or data access in IRP proceedings;
- How intervenors will demonstrate their access to modeling data does not represent a conflict of interest or grant their organization an unfair market advantage;
- Which government entity should review and verify the inputs, assumptions, and outputs from intervenor IRP modeling or proposals;
- Estimates of the proposal’s total cost, value, and rate impact for customers; and
- How the proposal will ensure Xcel’s customers are protected from funding software licenses for intervenors to use in other states or jurisdictions.

V. Staff Discussion

A. Summary of Decision Options

The first two decision options pertain to ILSR/VS's initial, November 2, 2021 petition. As discussed in the Background section, staff bifurcated the proceeding into seeking comments on process, with comments on the merits to come later. The Commission could address the merits if it chooses, but the intention at this point is not to address Decision Options 1 and 2.

Decision Option 3 is to deny the petition and not invite another petition (Utilities comments). Of note, staff listed the option to deny prior to the other recommendations not because staff supports it, but because if the Commission wishes to move forward with the petition, it can skip option 3, and the remainder of decision options section is easier to read.

Decision Options 4 and 5 pertain to the Department's recommendation to deny the petition without prejudice, request additional information, and issue a new notice on the merits. If the Commission moves forward with ILSR/VS's petition, staff supports Decision Option 4; it appears these options are acceptable to ILSR/VS, as ILSR/VS did not object to Decision Options 4 and 5 in Reply Comments.

Decision Option 6 is Xcel's request for even more information, which Xcel raised in Reply Comments. As noted above, staff supports additional information, but some of Xcel's recommendations appear to overlap with what the Department recommends. Staff suggests ILSR/VS comment on the items from Decision Option 6 that it supports.

Decision Options 7-9 pertain to whether to move forward with ILSR/VS's petition as part of a separate docket or in individual resource plans.

In the remainder of the Staff Discussion, staff will primarily discuss reasons for and against moving forward with a revised petition, and whether the petition should be considered in a separate docket *and* in individual resource plans, not either/or.

A. Examples from Other States

As a preliminary matter, staff will address examples from other states that ILSR/VS and CUB referenced to justify their claim that regulatory commissions "are increasingly recognizing that it serves the public interest to make modeling software more accessible to stakeholders by providing free software licenses."¹⁰

ILSR/VS refers to two cases from other states that allowed intervenor compensation in resource planning—one involving Indiana Michigan Power Company (I&M), and the other Dominion Energy South Carolina, Inc. (Dominion). Based on staff's admittedly very limited review of the orders in those dockets, those cases do not appear to reflect a true apples-to-apples comparison to ILSR/VS's request. Instead, they seem to be regulatory actions taken to remedy

¹⁰ ILSR/VS petition, p. 2.

specific problems with significantly flawed IRP filings from two different utilities in two different states.

In the I&M case, the Michigan Public Service Commission case approved a settlement agreement (cited in the ILSR/VS petition), which required that “I&M will withdraw its application and file a new IRP by December 15, 2021 ... I&M’s next IRP will be developed as part of a **single stakeholder process in which interested persons can participate**. (*Emphasis added by staff.*) I&M was required to “[p]rovide access to the Plexos model (or successor modeling tool) to intervenors in this case or staff for the purpose of reviewing the IRP.”¹¹ This suggests that instead of rejecting I&M’s IRP, I&M was allowed to file a new IRP following a stakeholder process, in which access was allowed for the purpose of reviewing I&M’s re-filed IRP.

In the Dominion case, the South Carolina Public Service Commission (SC PSC) rejected Dominion’s IRP¹² and required a Modified Update within 60 days, which was to be followed with a more robust 2022 IRP. The SC PSC Order stated that “the implementation of capacity expansion modeling and adoption of risk metrics [will] require meaningful input from stakeholders, so Dominion was directed “to convene an ongoing IRP Stakeholder Process.”¹³

As noted by the Utilities, stakeholder engagement is already a part of the pre-filing process, intervening organizations bolster the record with their own modeling, and the Department serves as a check against the utility’s assumptions and methodologies. ILSR/VS’s request is that all public utilities in Minnesota provide free access to modeling software licenses, which seems quite different than the decisions made by the Michigan and South Carolina commissions.

CUB referenced a Public Service Company of New Mexico case in which the utility sought bids to potentially replace the coal-fired San Juan Generating Station. As staff understands it, this case was not a resource planning process but a case similar to Xcel’s competitive resource acquisition process from 2013, which resulted in the Commission’s selection of Xcel’s Black Dog 6, Calpine’s Mankato II, and Geronimo’s Aurora Solar bids. In other words, CUB’s example did not apply to a statewide planning process; it invited parties to comment on a resource acquisition process in which a single utility solicited bids.

Staff does not intend to minimize the very real challenges intervenors face in order to participate in IRP proceedings, but the examples ILSR/VS and CUB introduced from other states seem to have arisen for a very specific reason, or to correct a specific problem. Also, staff is not arguing the Minnesota IRP process is flawless, but staff believes the argument that it is becoming a nationwide trend for regulatory commissions to require free modeling licenses to intervenors is not well-supported by the examples provided.

¹¹ *Order Approving Settlement Agreement, In the Matter of the Application of Indiana Michigan Power Company for Approval of its Integrated Resource Plan*, Case No. U-20591, at 5, <https://mi-psc.force.com/servlet.shepherd/version/download/068t000000E3oyxAAB> p. 4.

¹² Order p. 16.

¹³ Order, p. 23.

B. Summary of Procedural Recommendations

The main issue the Commission will need to address is whether to move forward with ILSR/VS's request, and if so, whether that should be part of a new docket, individual IRPs, or both. As a reminder, the parties' positions on this issue (setting aside the Utilities for now) are as follows:

- CUB essentially defers to the Commission on how to move forward but requests the Commission's order apply to public utilities and that it be addressed as quickly as possible. CUB recommends that "the Commission consider the petition either in a separate docket prior to January 1, 2023 or in the course of its consideration of each of the above-referenced IRPs."
- ILSR/VS supported CUB's suggestion to consider this petition in its own docket with the aim of a final order prior to January 1, 2023.
- The Department recommends ILSR/VS refile their petition no later than four months prior to Xcel's, MP's, and Otter Tail's *next* IRPs.
- The OAG recommends the Commission move the request to its own docket.
- Community Power recommends the Commission consider ILSR/VS's request within the original IRP dockets.

If the Commission moves forward with the request, staff believes supplemental information is needed, if not only for the fact that the question of what the request will cost ratepayers has not been answered. Overall, staff believes the following categories are most in need of further development (these are covered in the Decision Options):

- Cost estimates;
- The scope and breadth of the docket;
- Statutory authority, precedent, or consensus for utility funding; and
- Proposed processes and requirements for intervenor compensation.

Staff also believes ILSR/VS could provide additional information to help shed light on why intervenors need financial assistance. Staff does not disagree with the general premise of ILSR/VS's petition – that intervening organizations' modeling in resource planning dockets can lead to better outcomes for public utilities' customers – and a better understanding of the strain placed on intervening organizations could assist the Commission's decision. For example, ILSR/VS mentioned the challenges of providing additional analysis when a utility submits supplementary information and balancing when modeling licenses should be purchased with using the most recent data. With or without approval of ILSR/VS's request, a deeper analysis of issues such as uncertain timelines for resource plans may produce insights that could allow for improvements to the IRP process.

C. Legal Basis for the Petition

Several parties discussed Minn. Stat. §216B.16, subd.10 as the relevant lens through which to view ILSR/VS's request. However, ILSR/VS's request did not mention the intervenor compensation process used in rate cases; rather, ILSR/VS cited Minn. Stat. §216B.2422 subd. 2, which is the Commission's approval of an IRP that is in the public interest, indicating that ILSR/VS argues the Commission has general authority to act in ratepayers' interests. In other words, the Commission can act on behalf of ratepayers by allowing intervening parties the access to the same modeling software as the utility.

Staff believes that any subsequent petition by ILSR/VS should identify with particularity the specific legal basis under which they assert the Commission has authority to authorize utility funding of modeling licenses for intervening parties in an IRP proceeding. From staff's perspective, it seems clear that ILSR/VS's request does not fall directly under the existing intervenor compensation statute because Minn. Stat. §216B.16, subd. 10 refers exclusively to general rate cases. While it is up to the Commission whether to weigh in on the intervenor compensation statute at this time, staff suggests modifying the Department's recommendation, which is Decision Option 4.a., as shown below. Of course, modifying 4.a. in this way could still allow room for parties to cite the intervenor compensation statute as justification to authorize utility funding, but it at least removes the implication that the Commission's views that as the appropriate vehicle to address ILSR/VS's request.

4. Deny without prejudice the request of ILSR/VS. Find that ILSR/VS may refile their petition no later than four months prior to Xcel's, MP's, and Otter Tail Power's next IRPs. Any filing requesting compensation or payment for modeling license or other resources shall include the following information:
 - a. A discussion of ~~the rate case intervenor compensation statute, as well as any~~ relevant statutes, rules, or other legal considerations that must be considered in such a request;

The Commission may find that there is no plausible legal theory to authorize utility funding of modeling licenses for intervening parties, in which case the Commission can simply deny the petition. However, doing so might be premature, especially since the Commission's notice sought comments on process, and ILSR/VS may be able to put forward a legal basis for its request in a subsequent petition. But if the Commission allows a revised petition, staff believes it must include potential sources of Commission authority other than the intervenor compensation statute.

D. Denying the Request With or Without Prejudice

There are reasons other than statutory authority to deny the request and not invite another petition, which were discussed extensively by the Utilities. Staff lists some of the Utilities' concerns below as a reminder:

- Xcel and MP emphasized their significant efforts to encourage public participation in their planning proceedings, including seeking input on assumptions to use in their modeling.
- Xcel stated that new processes and requirements would need to be created for intervenor funding and/or unrestricted modelling data access in IRP proceedings.
- Xcel, MP, and Otter Tail stated that funding borne by Minnesota customers is appropriately handled at the Legislature and not in this regulatory proceeding.
- MP and Otter Tail noted that many intervenors are already utilizing EnCompass. MP and Xcel added that modeling requires specialized experience beyond funding and software access, and the scrutiny of modeling inputs overlaps with the Department's role in IRP proceedings.
- MP and Otter Tail raised concerns that funding modeling software for additional intervenors could create a longer IRP process.
- Otter Tail stated that Minnesota customers should not pay for such modeling software that can be used to conduct modeling in other jurisdictions.

In staff's view, four reasons for denying the request include: 1) it is speculative to assume that ratepayer benefits will outweigh the costs, especially without knowing what of the costs to ratepayers will be; 2) staff agrees with parties that ILSR/VS did not provide a specific legal basis for its request; 3) there is already robust stakeholder engagement by utilities, and advocacy groups such as the Clean Energy Organizations, CUB, and MLIG have produced modeling in past and pending IRP proceedings; and 4) staff agrees with the Utilities that ILSR/VS's request might best be handled through a legislative solution.¹⁴ However, as noted above, staff believes the Department's recommended Decision Option 4 is a reasonable position at this time.

E. Opening a New Docket versus Addressing the Request in Individual IRPs

The Commission's Notice Seeking Comment on ILSR/VS's request asked the question of whether the Commission should open a new docket or address ILSR/VS's request in individual resource plans. This presented the question as though the Commission had to choose one or the other. However, after reviewing parties' comments, each party provided reasonable procedural recommendations, and when viewed as a whole, staff believes that perhaps the answer should be the request should, to some extent, be considered in a separate docket *and* individual resource plans. This does not mean ILSR/VS's request should be up for review in multiple dockets, but if the Commission moves forward on this issue, there are some areas that

¹⁴ As staff understands it, participant compensation is currently moving through the legislative process (See https://www.house.leg.state.mn.us/comm/docs/8A_081_v6ESouKXmkXdScg.pdf, p. 44). The Commission might prefer to wait and see if criteria are established by the legislature before committing time and resources to a separate docket.

staff believes could be addressed at once and applied broadly, while others may need to be refined in individual dockets.

CUB recommended that “the Commission’s order in this matter apply consistently to all public utilities,” and the OAG stated the request “raises complex procedural and administrative questions that should be considered in their own docket.” Staff agrees, and to apply criteria consistently across public utilities, and to address procedural and administrative questions, it would be constructive to first establish the rules of the road prior to the next round of IRPs.

A benefit of addressing the request in individual resource plans is that each IRP (and each utility) is unique in its own way. As Otter Tail explained, there are jurisdictional cost sharing questions, and neither ILSR nor Vote Solar are intervenors in Otter Tail’s IRP. Also, Xcel discussed “material” contributions to the Commission’s decision, and any contribution would be specific to a particular resource plan. The Department and the OAG discussed cost-sharing options and the number of licenses that would be needed. These, too, would vary by IRP.

F. Staff Recommendation

The Decision Options on the next page concern ILSR/VS’s initial, November 2, 2021 petition; whether to deny the request with or without prejudice; a requirement for supplemental information; and the appropriate procedural process moving forward.

As discussed previously, the initial notice seeking comment on ILSR/VS’s petition did not intend to develop the record to address the merits of options 1 and 2. However, the Commission could adopt option 3 – to deny the petition with prejudice – if there is no statutory authority, precedent, or consensus for utility funding of intervening organizations outside of general rate case proceedings. However, staff leans toward option 4 (Department recommendation) to allow ILSR/VS the opportunity to provide cost-benefit analysis and a legal basis for its petition in a subsequent filing. Staff does not believe option 5 is necessary because that is exactly what staff would do anyway if the Commission adopts option 4.

With regard to option 6, the Commission could select elements of Xcel’s recommendations, but staff does not believe all of option 6 needs to be adopted.

On the question of whether the request should proceed in individual dockets or a separate docket, first, staff opposes granting the request for MP’s and Otter Tail’s pending IRPs. This means that, since Xcel’s IRP would be next in line, which has a filing date of February 1, 2024, staff supports addressing general areas of intervenor compensation in a separate docket before then. The outcome of that docket could be revisited in subsequent IRP proceedings starting in 2024. In other words, staff supports either option 8 or 9, but not option 7. However, staff agrees with the Utilities that this issue is best resolved through a legislative solution.

VI. Decision Options

ILSR and Vote Solar November 2, 2021 Request

1. Order public utilities subject to the Commission's resource planning requirements to acquire EnCompass modeling licenses for intervening organizations in resource plan dockets, beginning with Minnesota Power. **AND**
2. Require utilities to provide, without a data request, modeling inputs, including settings, and outputs, assumptions, any post-processing spreadsheets, and the model manual. (*ILSR/VS, CUB, Community Power*)

Utilities Initial Comments

3. Deny ILSR/VS's petition with prejudice. (*Utilities initial comments*)

Is additional information needed in a refiled petition?

4. Deny ILSR/VS's petition without prejudice. Find that ILSR/VS may refile their petition no later than four months prior to Xcel's, MP's, and Otter Tail Power's next IRPs. Any filing requesting compensation or payment for modeling license or other resources shall include the following information:
 - a. A discussion of the rate case intervenor compensation statute, as well as any relevant statutes, rules, or other legal considerations that must be considered in such a request;
 - i. A discussion of relevant statutes, rules, or other legal considerations that must be considered in such a request (*Staff variant*)
 - b. A full list of the expenses ILSR/VS are requesting the Commission order the utilities to pay for, the estimated dollar amounts for each, and a cost benefit analysis, including non-monetary benefits and costs, demonstrating that benefits exceed costs;
 - c. An explanation of how the Encompass license could be used in other jurisdictions' proceedings, and a proposal to share costs with those proceedings; and
 - d. Further explanation on the criteria the Commission should use to decide on the merits of these petitions. (*Department*) **AND**
5. Upon receiving a revised petition, the Commission issue a notice requesting comments on the criteria the Commission should use to issue a decision on the merits of the request, as well as any other topics the Executive Secretary deems necessary to build the record. (*Department*)
6. In addition to the information requested by the Department in Decision Options 4.a-d, ILSR/VS shall provide:

- a. Proposed processes and requirements for intervenor compensation, data access, and modeling proposals;
- b. How the proposal is permissible under Minn. Stat. §216B.16 or other pertinent statutes;
- c. How third-party modeling materially assists Resource Planning proceedings;
- d. Best practices or examples that demonstrate how third-party modeling can improve and/or expedite a Resource Plan proceeding without resulting in further delays, confusion, and costs;
- e. Proposed threshold for a “material” contribution from intervenors receiving funding and/or data access in Resource Plan proceedings;
- f. How intervenors will demonstrate their access to modeling data does not represent a conflict of interest or grant their organization an unfair market advantage;
- g. Which government entity should review and verify the inputs, assumptions, and outputs from intervenor Resource Plan modeling or proposals;
- h. Estimates of the proposal’s total cost, value, and rate impact for customers; and
- i. How the proposal will ensure the Company’s customers are protected from funding software licenses for intervenors to use in other states or jurisdictions.
(Xcel)

When and in which docket should the Commission consider the ILSR/VS petition?

7. Consider the ILSR/VS petition in Minnesota Power’s and Otter Tail’s pending IRPs and Xcel Energy’s next IRP. *(CUB proposes 7 and 8 but did not state a preference. Community Power prefers option 7.)*
8. Consider the ILSR/VS petition in a separate docket prior to January 1, 2023. *(ILSR/VS prefers option 8.)*
9. Move ILSR/VS’s request to its own docket and notice another round of initial and reply comments to provide interested parties with an opportunity to respond to the Request and ensure adequate record development on ratepayer issues. *(OAG. Staff note: From staff’s perspective, 9 is essentially the same as 8, but staff included both options in case OAG views its recommendation to be different or clearer.)*