

Staff Briefing Papers

Meeting Date July 13, 2023

Agenda Item 2*

Company	All Rate Regulated Utilities		
Docket No.	E,G-999/M-19-505 In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards E,G-999/CI-12-1344 In the Matter of a Commission Inquiry into Privacy Policies of Rate-Regulated Energy Utilities		
Issues	Should the Commission modify the Standards to ensure compliance with current Minnesota Law?		
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Relevant Documents

Date

MLIG Petition for Expedited Relief	June 2, 2023
CUB Response to MLIG Petition for Expedited Relief	June 5, 2023
PUC Notice of Comment Period	June 7, 2023
DOC Comments	June 8, 2023
MLIG Comments	June 20, 2023
Minnesota Power Comments	June 20, 2023
CUB Reply Comments	June 26, 2023

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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.

STATEMENT OF THE ISSUES

Should the Commission modify the Standards to ensure compliance with current Minnesota Law?

BACKGROUND

Following the Commission's March 13, 2023 Order Refining Open Data Access Standards (herein "the March 13th Order") the Minnesota Large Industrial Group (MLIG) filed a petition requesting reconsideration of the Order. Specifically, MLIG requested the Commission reconsider its decision to remove an exemption for large commercial and industrial customers with a peak demand greater than 5 MW from having their energy use included in requests for aggregated community-level¹ customer energy use datasets (herein the "industrial exemption").²

After initially requesting the Commission deny MLIG's petition, the Citizen's Utility Board of Minnesota (CUB) filed a letter jointly with MLIG requesting the Commission grant the petition solely for the purpose of tolling the statutory deadline.³ In their letter, the two parties cited pending legislation that would likely impact the Commission's March 13th Order.

On May 18th, The Commission met to consider MLIG's petition for reconsideration. The Commission ultimately chose to deny the petition, noting that the petitioner did not raise new issues and did not point to new and relevant evidence.

On May 24, 2023 Governor Walz signed H.F.2310 into law. Within the bill is Minn. Stat. § 216C.331⁴ (energy benchmarking) which includes the following language at Subdivision 8, paragraph (d):

Notwithstanding any other provision of law, a qualifying utility shall not aggregate or anonymize customer energy use data of any customer exempted by the commissioner [of commerce] under section 216B.241 from contributing to investments and expenditures made by a qualifying utility under an energy and conservation optimization plan, unless the customer provides written consent to the qualifying utility.

On June 2, 2023 MLIG filed a petition for expedited relief requesting the Commission amend the March 13 Order to bring it into compliance with the now current law. In its petition, MLIG

¹ Community-level refers to requests for data at the city, county, or zip-code level, or requests for data using census boundaries.

² Prior to the Commission's March 13th Order, the industrial exemption was applied to all requests for community energy use data (CEUD), which includes requests for aggregated and anonymized CEUD at the building- and community-level.

³ The referenced statutory deadline may be found in Minn. Stat § 216B.27

⁴ The new provisions will, in the future, be codified at Minn. Stat. § 216C.331. At this time, they are still in a pre-session law form as Act of May 24, 2023, Ch. 60, Art. 12 § 34. For brevity, this briefing paper will simply refer to the new legislation as Minn. Stat. § 216C.331.

urged the Commission to “rectify any and all inconsistencies between the Order and existing Minnesota law”⁵ noting that a modification of the Commission’s March 13th Order allows the Commission to account for the significant changes in the law since it last considered the issue. MLIG requested that the Commission amend its March 13th Order by adding the language found in Minn. Stat. § 216C.331. subd. 8(d), (quoted above), to the Standards as Paragraph I.B.

CUB filed a letter the same day stating that it did not oppose MLIG’s petition.

On June 7, 2023 Commission Staff filed a Notice of Comment Period in response to MLIG’s petition requesting comments regarding whether the Commission should adopt MLIG’s requested amendments.

The following parties filed initial comments by June 20, 2023:

- The Department
- MLIG
- Minnesota Power

CUB was the only party to file reply comments by June 26, 2023.

DISCUSSION

The Department:

The Department of Commerce (“the Department”) agreed with MLIG that the new statute in its current form supersedes parts of the language in the Commission’s March 13 Order, noting that someone reading the Order who is not aware of Minn. Stat. § 216C.331. subd. 8(d) may get confused. However, the Department has two concerns with MLIG’s modification:

1. The Standards themselves do not refer to the C&I exemption; rather, the exemption was established and modified in the body of the Order.
2. It is unwise for the Commission to adopt new statutes as a matter of course in its Orders as the statute may be rescinded or modified in the future.

For these reasons the Department recommended that the following language be added to Standards Paragraph I instead:

I.B. These standards must abide by all existing Minnesota statutes. In any case where a statute contradicts with a standard either as set forth in this document or the body of a Minnesota Public Utilities Commission order pertaining to these standards, the statute prevails.

Additionally, for the sake of clarity, the Department stated that the Commission could describe in the body of its Order (approving MLIG’s June 2, 2023 petition, with modification) how Minn.

⁵ MLIG’s Petition, p.4

Stat. § 216C.331. subd. 8(d) may supersede the changes made to the industrial exemption in the Commission's March 13 Order.

CUB:

In its reply Comments, CUB voiced support for both of the Department's recommendations. Alternatively, CUB noted that it continues to not oppose MLIG's petition.

Minnesota Power:

Minnesota Power did not dispute that Minn. Stat. § 216C.331. subd. 8(d) warranted limited modifications to the Standards. The Company did not oppose MLIG's recommended modifications to the Standards.

MLIG

MLIG continued to support the relief it requested in its initial petition. Additionally, MLIG's comments informed the Commission that it had appealed the Commission's March 13th Order. MLIG stated that it was forced to appeal the March 13th Order to preserve its rights, and noted that they have moved the Court of Appeals to stay the appeal pending the Commission's decision on the petition.⁶

STAFF ANALYSIS

Staff agrees with the commenters that the passage of new legislation which will be codified at Minn. Stat. § 216C.331, subd. 8(d) requires that CIP-exempt customers must be exempted from any data disclosures for which they have not provided written consent, and staff recommends that the Commission direct that the Standards be updated to reflect that change.

Staff notes that the Commission does not, as a matter of regular practice, amend or re-open its prior orders—although it has the authority to do so. Instead, the Commission's normal practice is to simply issue a new order. Staff believes that would be appropriate in this proceeding. If the Commission directs changes to the Standards, Staff will create a new version of the standards to be issued along with the order.

Both MLIG and DOC recommend new language be inserted in section I of the Standards, related to Purpose and Scope. Staff believes that it may be more precise to add the new language in section III, which provides the specific details of what data may be subject to disclosure as reflected in Decision Option 1.

Staff notes that it did not include the Department's recommendation to describe in the body of its Order how Minn. Stat. § 216C.331. subd. 8(d) may supersede the changes made to the 5 MW C&I exemption in the Commission's March 13 Order, as the Commission's order will, as always, explain the basis for the actions taken.

⁶ MLIG stated at p.1 of its initial comments: "Should the Commission's decision moot all or a portion of MLIG's appeal, MLIG may be in a position to withdraw its appeal."

Staff recommends Decision Option 1, which Staff believes is consistent with the recommendations of MLIG, DOC, CUB, and Minnesota Power.

DECISION OPTIONS

- 1.** Update the Open Data Access Standards to include the exemption required by Minn. Stat. § 216C.331, as follows:

III.E. Notwithstanding any other provisions in law or in these Standards, a utility shall not aggregate or anonymize customer energy use data of any customer exempted by the commissioner of commerce under section 216B.241 from contributing to investments and expenditures made by a utility under an energy and conservation optimization plan, unless the customer provides written consent to the utility, pursuant to Minn. Stat. § 216C.331, subd. 8(c).

(Staff)

- 2.** Amend the Commission's March 13, 2023 Order Refining Open Data Access Standards to include the following language to Paragraph I of Standards attached to the Order:

I.B. Notwithstanding any other provision of law, a utility shall not aggregate or anonymize customer energy use data of any customer exempted by the commissioner of commerce under section 216B.241 from contributing to investments and expenditures made by a utility under an energy and conservation optimization plan, unless the customer provides written consent to the utility.

(MLIG, CUB and Minnesota Power not opposed)

- 3.** Add the following language to Paragraph I of the Standards:

I.B. These standards must abide by all existing Minnesota statutes. In any case where a statute contradicts with a standard either as set forth in this document or the body of a Minnesota Public Utilities Commission order pertaining to these standards, the statute prevails.

(DOC, CUB)