

Staff Briefing Papers

Meeting Date November 30, 2023

Agenda Item 2**

Company Minnesota Power

Docket No. E-015/GR-21-335

In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota

Issues Should the Commission reopen, reconsider, and/or clarify its September 29, 2023 Findings of Fact, Conclusions, and Order?

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Relevant Documents

Date

Minnesota Public Utilities Commission (PUC) – Findings of Fact, Conclusions, and Order (Order) February 28, 2023

Large Power Intervenors (LPI) – Petition for Reconsideration and Clarification March 20, 2023

Minnesota Public Utilities Commission – Order Denying Petitions for Reconsideration and Granting in Part Request for Clarifications May 15, 2023

Minnesota Power – Compliance Filing June 14, 2023

Minnesota Public Utilities Commission – Order Approving Compliance Filing September 29, 2023

LPI – Petition for Reconsideration October 19, 2023

Minnesota Power – Reply to Request for Reconsideration October 30, 2023

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BACKGROUND

I. Statement of Issues

Should the Commission reopen, reconsider, and/or clarify its February 28, 2023 Findings of Fact, Conclusions, and Order?

II. Background

On November 1, 2021, Minnesota Power (MP or the Company) filed a general rate case (Petition) with the Minnesota Public Utilities Commission (PUC or Commission) in this docket and requested a \$108.3 million, or approximately 17.58 percent, annual increase to its Minnesota retail electric rates based on a rate of return on common equity capital of 10.25 percent, with a January 1, 2022 effective date.

The intervenors in this case are:

- The Minnesota Department of Commerce, Division of Energy Resources (Department or DOC)
- The Office of the Attorney General – Residential Utilities Division (OAG)
- Large Power Intervenors (LPI)
- Energy Cents Coalition (Energy Cents or ECC)
- Citizens Utility Board of Minnesota (CUB)

On December 2, 2021, the Commission heard MP's Petition and, on December 30, 2021, issued Orders accepting the filing, suspending rates, extending the rate case timeline by 90 days to November 30, 2022, setting interim rates effective January 1, 2022, and referring this docket to the Office of Administrative Hearings (OAH) for a contested case proceeding.

When setting interim rates, the Commission approved an interim rate increase of 14.23 percent, or \$87.3 million dollars, with one exception. Due to exigent circumstances, MP's interim increase for residential customers was limited to 7.11 percent. The Commission's February 28, 2023 Order authorized MP to increase its rates by approximately 9% rate increase for all classes.

On March 20, 2023, Large Power Intervenors (LPI) submitted their Petition for Reconsideration. LPI asked the Commission to reconsider its decision to use an across-the-board increase of rates to all classes. LPI asked for clarification regarding the interim rates decision around treatment of the gap between the 9% increase for residential customers and the 7.11% interim increase for residential customers, the Large Lighting and Power (LLP) Time of Use energy rates proposal. Finally, LPI asked for clarification of the outcome of the proposed LLP Voltage Discount Decision.

On May 15, 2023, the Commission denied LPI's Reconsideration Petition on these issues, on the grounds that it did not raise new issues, point to new and relevant evidence, or expose errors in the February 28, 2023 Order, nor did it otherwise persuade the Commission that it should

rethink its decisions set forth in the Order.

On June 14, 2023, Minnesota Power submitted its Compliance Filing incorporating the final order and clarifications and detailing plans for final rates implementation and interim rate refunds.

On July 17, 2023, Large Power Intervenors and the Department of Commerce filed comments on the interim rate refund plan. LPI argued that the Commission's decision on ST Paper and Cenovus was incorrect in that Minnesota law does not allow for the adjustment of sales revenue made by MP to account for ST Paper and Cenovus. LPI argued that creating a new set of final rates solely for the purposes of interim rate refunds was contrary to precedent and state law and that the ST Paper and Cenovus exclusion had a dramatic effect on the refund. LPI added that the result was a windfall to MP and amounted to single-issue ratemaking. LPI also connected the ST Paper and Cenovus exclusion to the revenue MP agreed to forgo from the Residential class, noting that MP was receiving around 5 times as much from this adjustment as they gave up from the Residential class.

On July 24, 2023, Minnesota Power filed its reply comments to LPI and the Department. MP argued that LPI's plan was inconsistent with the Reconsideration order, and cited *In re Application of N. States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in Minn.*, Docket No. E-002/GR-05-1428, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; ORDER OPENING INVESTIGATION at 7-12 (Sept. 1, 2006) as precedent for an adjustment to interim rate refunds in response to changing circumstances.

On September 29, 2023, the Commission issued its Order approving Minnesota Power's June 14, 2023 Compliance Filing.

On October 19, 2023, LPI filed a new reconsideration petition asking the Commission to reconsider approval of the Minnesota Power interim rate refund plan.

On October 30, 2023, Minnesota Power filed comments recommending that LPI's second reconsideration petition be denied.

III. Minnesota Statutes and Commission Rules

Petitions for reconsideration are subject to Minn. Stat. § 216B.27, and Minn. Rules, part 7829.3000. Petitions for reconsideration are denied by operation of law unless the Commission acts within sixty days of the request. If the Commission takes no action on LPI's second petition, LPI's request would be considered denied as of December 18, 2023. The Commission may also take specific action to deny the requests.

If the Commission takes up a party's request for reconsideration, the Commission can: (1) grant reconsideration, and (a) affirm, (b) modify or (c) reverse its September 29 decision, or (2) deny the petition for reconsideration and thereby affirm the September 29 decision. The Commission may also rehear or reconsider its September 29 Order on its own motion.

The Commission may also reopen its September 29 Order in the future pursuant to Minn. Stat. § 216B.25.

DISCUSSION

I. Large Power Intervenor Request for Reconsideration

A. Commission Decision

The Commission was unpersuaded by LPI's arguments that the Company was attempting to reduce interim rate refunds in a manner inconsistent with Minn. Stat. §216B.16, subd. 3(c). The Commission noted that LPI did not request reconsideration of the Commission's May 15, 2023 Order decision excluding revenues not collected from ST Paper and Cenovus.

The Company's methodology reflected the Commission's intent to protect all ratepayers by requiring Minnesota Power to include, in its final revenue requirement calculations, revenues from two customers who had not yet begun operations during the Company's 2022 test year but who were expected to resume operations in 2023. This decision reduced the Company's overall revenue requirement, thereby reducing costs to remaining ratepayers, including large power customers, such as LPI. In making this decision, the Commission also authorized exclusion of revenues not collected from these two customers during the interim rate period, and there is no dispute that the Company did not, in fact, collect such revenues. LPI's reasoning that Minn. Stat. § 216B.16, subd. 3(c), required the Company to make refunds based on revenues not collected during the interim rate period from non-customers was found by the Commission to be unfounded. The Commission found that Minnesota Power correctly calculated revenues and corresponding refunds based on the amount collected during the interim rate period, consistent with the statute's requirement to do so.

B. LPI's Request

LPI asked the Commission to reconsider approval of the Minnesota Power interim rate refund plan. LPI made two basic arguments. First, the Compliance filing violated Minnesota Law, by refunding an amount other than the difference between the actual final rates and interim rates. Second, LPI argued that the adjustment for ST Paper and Cenovus amounted to single-issue ratemaking and was contrary to existing precedent.

1. The Interim Rate Refund violated Minnesota Law, according to LPI

LPI cited several precedents to bolster its case that no adjustments should be made to rate

design. In a 1986 case¹, the Minnesota Supreme Court found that the statute required that refunds be made based on the previously existing rate design, even though the entire rate increase applied to a single class. This meant that customers in other classes were required to pay partial interim rates, even though their final rates were the same as their previously existing rates before the rate case – effective interim rates were higher than either prior rates or final post-rate case rates. LPI argued that the adjustments for ST Paper and Cenovus are analogous to the changes in rate design in the 1986 case.

LPI also cited a 1989 case² where Minnesota Power had proposed an interim-rate test year, separate from the final-rate test year, with separate cost of service studies. The Court of Appeals upheld the Commission order to reject the interim-rate test year and refund based on final rates, even though it resulted in interim rates below previously existing rates.

LPI argued that the interim rate process is a blunt tool to protect customers and utilities during the interim rate period. LPI characterized the process as “Utilities are permitted to increase rates generally consistent with a statutory formula while refunds, when appropriate, are awarded to customers to protect them from overzealous utilities, consistent with another formula.”³

LPI argued that:

The clear violation of state law can be seen through a simple comparison of Minnesota Power’s interim-rate refund approach adopted by the Commission and LPI’s approach. In the Compliance Filing Order, the Commission concluded that “Minnesota Power correctly calculated revenues and corresponding refunds based on the amount collected during the interim rate period, consistent with the statute’s requirement to do so.”⁴ This statement is demonstrably false for two reasons. First, the differences in approaches between what the Commission approved and what LPI suggested are based entirely on the differences in calculating the overcollection factors applied to actual interim rates collected, not, as the Commission states, differences in the amounts of interim rates Minnesota Power actually collected during the rate-case proceeding. Second, the Commission’s justification for modifying the overcollection factors amounts to unlawful retroactive single-issue ratemaking.

¹ *In the Matter of the Petition of Peoples Natural Gas Co. for Authority to Increase Rates for Gas Utility Service in Minnesota*, 389 N.W.2d 903, 905 (Minn. 1986).

² *In re Minnesota Power & Light Co.*, 435 N.W. 2d 550 (Minn. Ct. App.), pet. for rev. denied (Minn. Apr. 19, 1989)

³ LPI Reconsideration Request, p. 10

⁴ Compliance Filing Order at 6

2. The Adjustment for ST Paper and Cenovus amounts to Single Issue Ratemaking

LPI argued that removing ST Paper and Cenovus amounts to single-issue ratemaking, and is contrary to longstanding regulatory precedent. If it is proper to retroactively look at two individual customers' actual sales, then it follows that the Commission would also need to incorporate actual sales to all customer classes during the same period. Further, actual sales and expenses would vary from the test year expenses and sales. For example, approved test year Residential sales were 946,536 MWh for 2022, but actual sales were 1,063,695 MWh. This deviation would affect O&M expenses, fuel, plant, etc. and is one of countless deviations from test year expenses. To single out a single wholesale and a single retail customer, ignores all these other variations, some of which increased and some of which decreased MP revenues. This runs counter to the Commission's own principle of not treating test year changes in isolation from one another.

3. The ST Paper and Cenovus adjustment reduces Large Power customers' refunds by approximately \$7.7 million

LPI calculated that, relative to rates calculated in accordance to Minnesota Law, the ST Paper and Cenovus adjustments represent a cost to non-residential customers of approximately \$7.7 million which LPI described as dramatic.

Table 1 – Large Power Calculations

2022	Interim Rate Refund	Public Utilities Commission/MP	LPI
<i>Step 1</i>	<i>Calculating the Overcollection Factor</i>		
a	TY Interim Rate Increase	\$87,323,708	\$87,323,708
b	TY Interim Rate Increase w/o Resi.	\$71,393,484	\$71,393,484
c	Final Approved TY w/o Resi.	\$54,917,913	\$48,278,951
d	Non-Resi Overcollection Amount (b-c)	\$16,475,571	\$23,114,533
e	Non-Resi Overcollection Factor (d/b)	23.0771%	32.3763%
<i>Step 2</i>	<i>Applying the Overcollection Factor</i>		
f	TY Interim Rates Collected	\$85,517,202	\$85,517,202
g	TY Interim Rates Collected w/o Resi.	\$77,600,762	\$77,600,762
h	Non Resi Overcollection Factor (e)	23.0771%	32.3763%
i	Non-Resi Overcollection Amount Before Interest (h*g)	\$17,908,033	\$25,124,217
2023	Interim Rate Refund	Public Utilities Commission/MP	LPI
<i>Step 1</i>	<i>Calculating the Overcollection Factor</i>		
j	TY Interim Rate Increase	\$87,323,708	\$87,323,708
k	TY Interim Rate Increase w/o Resi.	\$71,393,484	\$71,393,484
l	Final Approved TY w/o Resi.	\$49,627,398	\$48,278,951
m	Non-Resi Overcollection Amount (k-l)	\$21,766,086	\$23,114,533
n	Non-Resi Overcollection Factor (m/k)	30.4875%	32.3763%
<i>Step 2</i>	<i>Applying the Overcollection Factor</i>		
o	TY Interim Rates Collected	\$29,867,559	\$29,867,559
p	TY Interim Rates Collected w/o Resi.	\$26,835,975	\$26,835,975
q	Non Resi Overcollection Factor (n)	30.4875%	32.3763%
r	Non-Resi Overcollection Amount Before Interest (q*r)	\$8,181,617	\$8,688,482
s	TOTAL (i+r)	\$26,089,650	\$33,812,699

Large Power Intervenors urged the Commission to correct the Compliance Filing Order to be consistent with Table 1 above, rendering it consistent with the historic statutory construct, Commission precedent, the record, and Minnesota law.

C. Minnesota Power response to LPI's Reconsideration Request

Minnesota Power argued that the Compliance Filing Order is well-reasoned, supported by the record, and results in correct interim rate refund amounts for Minnesota Power's customers. MP noted that LPI's request for reconsideration takes issue with exclusion of ST Paper and Cenovus, and that LPI did not take issue with the decision to exclude sales revenues for these customers when the Commission originally decided this issue on May 15, 2023. MP noted that LPI made the argument against exclusion of sales revenues for ST Paper and Cenovus in its July 17, 2023 response to MP's Interim Rate Refund Plan. At that time, MP explained that it is reasonable for the Commission to account for known and measurable changes to ST Paper and Cenovus revenues in 2022 and 2023, and that past Commission decisions have reflected known and measurable changes to test year revenues.

MP also argued that the statutory language cited by LPI does not require that final rates be calculated based on any particular set of sales or preclude the Commission from implementing

a known and measurable adjustment to sales in order to establish the test year final rates and revenue requirement.

MP noted that the conditions of the 1989 case cited by LPI do not apply because there is not a separate Interim Class Cost of Service Study and prior effective rates are not at issue. MP argued that the court of appeals specifically rejected the MP's adjustments proposed in 1989 because they were not sufficiently well-established in type and magnitude on that record. The court noted with approval that the Commission has made adjustments when "there is a compelling need to do so" and "when their certainty and magnitude would otherwise make the test year process unreliable". MP cited that, in the instant case, the Commission made the determination that the record supported such a known and measurable change to ensure just and reasonable rates.

MP argued that the LPI petition should be denied as it points to no new facts or issues or otherwise supports why the Commission decision is unlawful.

D. Staff Analysis

Staff continues to believe the methodology proposed by MP and adopted by the Commission is methodologically sound and consistent with statute and recommends that the Commission deny LPI's request for reconsideration.

Staff also notes that the Department of Commerce did not file comments related to LPI's current request.

DECISION OPTIONS

1. Grant LPI's request for reconsideration of the September 29, 2023 order regarding exclusion of ST Paper and Cenovus sales revenues from Interim Rate refund calculations. (LPI)

AND

2. Require Minnesota Power to amend its interim rate refund calculations to apply the overcollection factor recommended by LPI as shown in Table 1 of LPI's October 19, 2023 petition for reconsideration. (LPI)

OR

3. Deny LPI's request for reconsideration of the September 29, 2023 order regarding exclusion of ST Paper and Cenovus sales revenues from Interim Rate refund calculations. (MP, Staff)