



January 19, 2024

VIA E-FILING

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: Matter of Investigation into Implementing Changes to the Renewable Energy
Standard and the Newly Created Carbon Free Standard
Docket No. E999/M-23-151
INITIAL COMMENTS

Dear Mr. Seuffert:

On April 23, 2023 the Minnesota Public Utilities Commission (or, "Commission") filed a Notice of Comment Period regarding the Matter of Investigation into Implementing Changes to the Renewable Energy Standard and the Newly Created Carbon Free Standard under Minn. Stat. § 216B.1691. This filing contains Minnesota Power's responses to the clarification questions issued by the Commission on December 20, 2023.

If you have any questions regarding this filing, please contact me at (218) 428-9846 or jmccullough@mnpower.com.

Respectfully submitted,

Jess McCullough
Public Policy Advisor II
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Attach.

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

In the Matter of Investigation into
Implementing Changes to the
Renewable Energy Standard and the
Newly Created Carbon Free Standard

Docket No. E999/M-23-151
INITIAL COMMENTS

I. INTRODUCTION

On April 23, 2023, the Minnesota Public Utilities Commission (or, “Commission”) filed a Notice of Comment Period regarding the Matter of Investigation into Implementing Changes to the Renewable Energy Standard (or, “RES”) and the Newly Created Carbon Free Standard (or, “CFS”) under Minn. Stat. § 216B.1691. At issue is the question of what changes and/or clarifications must be made to the criteria and standards used to measure an electric utility’s efforts to meet the RES and Solar Energy Standard (or “SES”) to comply with the changes made to Minn. Stat §216B.1691 by Minnesota Session Laws, 2023, Regular Session Chapter 7 (H.F. No. 7). On October 11, 2023 Minnesota Power (or, “Company”) filed a letter clarifying that Hibbing Public Utilities and Brainerd Public Utilities are not contractually defined as municipal customers of Minnesota Power, and as such the Company will not include them in its RES reporting. Following discussion of this issue before the Commission on October 19, 2023, the Commission issued an Order Clarifying Implementation of Changes to Minn. Stat. §216B.1691 and Directing Additional Comment Period. The topics open for comment related to this issue were issued December 20, 2023, and Minnesota Power responds to them in the following section.

II. TOPICS OPEN FOR COMMENT

1. Whether and how municipal power agencies are subject to reporting under Section 216B.1691 as an “Electric Utility.”

On May 11, 2011, the Commission issued an order in Docket No. E999/M-10-989, clarifying that Minnesota Power’s sales to its wholesale municipal customers was subject to the Renewable Energy Standard (“RES”) and that Minnesota Power was obligated to retire Renewable Energy Credits (“RECs”) on behalf of these municipal utilities. The Commission stated:

The Commission has carefully reviewed the filings of the parties and concurs with the Department that the clear meaning of the renewable energy statute requires that any wholesale power sales to distribution companies that serve Minnesota customers are subject to the RES.

The Commission therefore concurs with the Department, and on a going forward basis finds that any wholesale power sales that an electric utility, as that term is defined in the statute, makes to a distribution utility for distribution to that utility’s Minnesota retail customers must be included in the calculation of the utility’s renewable energy objective or standard.

Ever since the Commission’s order, Minnesota Power has complied with this requirement and retired RECs on behalf of the municipal customers that it serves through wholesale power arrangements. The changes in Minnesota law in 2023 do not alter these requirements. However, the legislature expanded the definition of “electric utility” to specifically include municipal utilities even if they are not part of a municipal power agency:

“Electric utility” means: (1) a public utility providing electric service; (2) a generation and transmission cooperative electric association; (3) a municipal power agency; (4) a power district; or (5) a cooperative electric association or municipal utility providing electric service that is not a member of an entity in clauses (2) to (4).¹

Minnesota Power’s understanding is that this expansion of the definition of “electric utility” was intended to cover all entities providing electric service in the State of Minnesota and

¹ Minn. Stat. Sec. 216B.1691, subd. 1(d).

that going forward all entities are subject to the requirements in Minn. Stat. Sec. 216B.1691. As the Commission summarized in its 2011 Order from the Department's comments:

The Department asserted that the language of Minn. Stat. § 216B.1691, subd. 2 is clear that wholesale sales to distribution companies which serve Minnesota customers are subject to the RES. The Department further argued that exempting such sales for Minnesota Power would result in discriminatory treatment relative to the municipal power agencies and generation and transmission cooperatives serving Minnesota distribution companies, which are subject to the REO-RES.

Minnesota Power respectfully asserts the same analysis from the 2011 order should apply to all entities regardless of whether they are served by public utilities, municipal power agencies, generation and transmission cooperatives, or are independent, any entity that meets the definition of an electric utility is subject to the RES and carbon free standards in Minn. Stat. Sec. 216B.1691. Furthermore, it would lead to an unfair result to allow entities to be exempt or not need to meet the standards simply because they are a member of an entity that itself does not provide electric service to its members.

2. Should the Commission require that any entity that intends to report on behalf of one or more electric utilities newly subject to Section 216B.1691, displayed in Table 1 below, identify:

a. The electric utilities they intend to report on behalf of; and b. The portion of each electric utilities' total retail electric sales covered by the report? (Ex. If a public utility supplies a distribution utility with 100% of the energy they consume in a year, the public utility would name the distribution utility they are reporting for, and state that 100% of the distribution utility's energy sales will be covered by its report.)

The Company is amenable to continuing to its reporting for the wholesale municipal customers it serves, consistent with the May 11, 2011, Commission Order in E999/M-10-989; however, the Company notes its wholesale municipal customers have since evolved. The Company's current list of municipal customers includes several – but not all – members of Northeastern Minnesota Municipal Power Agency (or, "NEMMPA"). As not

all of these entities are included as newly subject to Section 216B.1691 in Table 1, the Company requests clarification from the Commission regarding the best and most consistent reporting process for these entities.

3. Please identify any distribution cooperatives that serve fewer than 50 Minnesota customers (such as those located near the state's border), that have not been included in the list of Electric Utilities displayed in Table 1 below who are included in the definition of "electric utility" in Section 216B.1691. Does the Commission have any authority to modify these utilities' obligation to comply with Section 216B.1691? If so, how should the obligations be modified?

The Company takes no position on this question.

4. Are there any other issues helpful to the Commission's implementation of Minn. Stat. § 216B.1691?

Minnesota Power is appreciative of the Commission's response to these concerns. The Company does and will continue to report for the wholesale municipal customers it serves as defined by the Commission. As stated above, the need for clarity in applicability and reporting is critical to the successful implementation of the above referenced statute and the Carbon Free by 2040 Law more generally.

VI. CONCLUSION

Minnesota Power appreciates the opportunity to engage with the Commission and other stakeholders on the most effective implementation of the Renewable Energy and Carbon Free Standards in this docket. Additionally, the Company appreciates the opportunity to further clarify its position on this issue within that larger context. Please feel free to contact me with any questions regarding these matters.

Dated: January 19, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jess McCullough".

Jess McCullough
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STATE OF MINNESOTA)
)ss
COUNTY OF ST. LOUIS)

AFFIDAVIT OF SERVICE VIA
ELECTRONIC FILING

Tiana Heger of the City of Duluth, County of St. Louis, State of Minnesota, says that on the 19th day of January, 2024, she served Minnesota Power's Comments in **Docket No. E999/M-23-151** on the Minnesota Public Utilities Commission and the Energy Resources Division of the Minnesota Department of Commerce via electronic filing. The persons on E-Docket's Official Service List for this Docket were served as requested.



Tiana Heger