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February 7, 2024

Via Electronic Filing

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

RE: Reply and supplemental comments of the Minnesota Municipal Utilities Association (MMUA) to the initial comments due 1/19/2024 and the supplemental comments requested in the Notice of Extended Comment period dated 1/26/2024 in the Matter of Investigation into Implementing Changes to the Renewable Energy Standard and the Newly Created Carbon Free Standard under Minn. Stat. §216B.1691.

Docket No. E-999/CI-23-151

Dear Mr. Seuffert:

The Minnesota Municipal Utilities Association (MMUA) submits the enclosed reply and supplemental comments to the Commission's Docket # E-999/CI-23-151

Please contact me at 612-263-0440 or ksulem@mmua.org if you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink that reads "Kent Sulem".

Kent Sulem
Director of Government Relations and Senior Counsel

Enc. Reply and Supplemental Comments of Minnesota Municipal Utilities Association

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of an Investigation into
Implementing Changes to the
Renewable Energy Standard and the
Newly Created Carbon Free Standard
under Minn. Stat. §216B.1691

DOCKET NO. E-999/CI-23-151

Reply and Supplemental Comments of
Minnesota Municipal Utilities Association

INTRODUCTION

MMUA offers the following reply comments in response to the initial comments due January 19, 2024, and supplemental comments as requested in the Notice of Extended and Supplemental Comments dated January 26, 2024. MMUA is a nonprofit, voluntary-membership association advocating on behalf of the municipally owned electric, gas, and water utilities across Minnesota. In addition, the municipal power agencies which are at the center of the December 20, 2023, Notice of Comment in Docket No. 23-251, are affiliate members of MMUA. MMUA’s mission is to unify, support, and serve as a common voice for municipal utilities.

COMMENTS

A review of the initial comments of MMUA, the Central Minnesota Municipal Power Agency (CMPAS), the Southern Minnesota Municipal Power Agency (SMMPA), and Missouri River Energy Services (MRES) reveals that all agree that municipal power agencies (MPA) have been and are expressly included in the definition of the term “electric utility” under Minnesota Statutes §216B.1691.¹ Section 216B.1691 goes on to require electric utilities, including municipal power agencies, to report compliance with

¹ §216B.1691, subd. 1 (d).

the renewable energy standard and the newly created carbon-free standard,² and these MPAs have acknowledged this obligation.

What changed as a result of Minnesota Session Laws 2023 chapter 7 is that the definition of “electric utility” now includes any municipality that is not a member of an MPA. Even though it quotes the new definition in its initial comments, Minnesota Power erroneously summarizes it to include all municipal utilities “...even if they are not part of a municipal power agency.” A correct summary would read that a municipal utility is an “electric utility” for the purposes of Minnesota Statutes §216B.1691 only if, not even if, they are not part of an MPA.

Minnesota Power goes on to state that its understanding of the new definition of “electric utility” was that it was intended to cover all utilities providing electric service in Minnesota. However, it is not Minnesota Power’s understanding that matters. It is the clear and express words chosen by the legislature that governs, which means if a municipal utility is a member of an MPA, it is not an “electric utility” for the purpose of Minnesota Statutes §216B.1691.

As found in Table 1 of the MPUC’s order for this docket, dated December 6, 2023, there are 23 known municipal utilities that are not currently a member of an MPA. It is MMUA’s understanding that one additional utility (Delano) will leave its MPA sometime in 2024 as part of a decision reached before the passage of Chapter 7. Twenty-two of these utilities are served by an IOU or a G&T that is obligated to report its total sales under Minnesota Statutes §216B.1691 and which report will include the sales to these municipal utilities and thus show compliance with the RES and CFS. The MPAs that submitted initial comments, and Minnesota Power agree to this reading of the applicable statute.

This leaves two utilities, Delano and Moose Lake, that under current law would be responsible for their own reporting as “electric utilities” by virtue of not being members of an MPA and not being serviced by another reporting entity.

There are also 16 municipal utilities that are members of the Northeastern Minnesota Municipal Utilities Power Agency (NEMMPA). Fourteen of the 16 are served by Minnesota Power, and Minnesota Power acknowledges its obligation to these 14 municipal utilities. However, Minnesota Power argues that the other two should be added to Table 1 as an “electric utility” under Minnesota Statutes §216B.1691. However, to take such action would be contrary to the clear and express language adopted into law and that only the legislature can now change. It should be noted that while not statutorily obligated to do so, both utilities have expressed a willingness to consider some form of voluntary reporting.

² §216B.1691, subd. 3.

In its request for supplemental comments, the Commission asks two primary questions, each with its own subpart. The first primary question is, “Should municipal power agencies that do not supply energy, like Northeastern Minnesota Municipal Power Agency, be considered an “electric utility” under §216B.1691 and be included in the Commission’s list of “electric utilities?” This question is then expanded to ask, “Do such municipal power agencies meet the statutory definition of a municipal power agency provided in Minn. Stat. §453.52, or the legislative intent described in Minn. Stat. §453.51?” NEMMPA is a power agency duly created under Minnesota Statutes §453.53. As such, it is recognized as a separate political subdivision and municipal corporation by definition under Minnesota Statutes §453.52, subdivision 8 and is entitled to the respect thereof. While NEMMPA does not directly provide power to its members, it facilitates the ability of the individual members to negotiate better terms as part of the larger MPA than if each utility had to negotiate without the advantage being part of the larger overall negotiations. Thus, NEMMPA is clearly serving the intent of providing a means to its members to provide an adequate, economical, and reliable supply of power.

The result of being a valid MPA is that NEMMPA is a power agency and thus an “electric utility” under Minnesota Statutes §216B.1691. However, with no sales to report, the second primary question comes into play, “Should the Commission consider alternate reporting requirements for MPAs that do not supply energy in order to monitor whether the MPA’s members’ energy sales are being accounted for in other electric utilities’ RES and SES compliance reports?” The question is expanded to ask, “If so, what reporting requirements should the Commission consider?” MMUA believes the best way for such MPAs to be treated is in the manner discussed above, that the wholesale provider is in the best position to report compliance as they currently do for the RES and will do for the CFS. MMUA notes that municipal utilities, whether reporting on their own or through an MPA or wholesale provider, are not subject to the SES.

Finally, MMUA wishes to address issues raised by the Commission’s Information Request to Minnesota Power and Minnesota Power’s response, dated January 23, 2024. In request #1, the Commission states that several but not all NEMMPA members were identified as “electric utilities” in the commission’s Order dated December 6, 2023. This is not correct. By virtue of being members of an MPA, no such NEMMPA member was listed as an “electric utility” in Table 1 of the Order, nor should they be listed. The commission asked Minnesota Power for an up-to-date NEMMPA membership list. MMUA submits Attachment 1 reflecting NEMMPA’s membership as it is currently documented by their filings with the Office of the Minnesota Secretary of State.

In the second request, the Commission seeks clarification as to which NEMMPA members were removed from the list and when Minnesota Power had knowledge of a utility’s membership in NEMMPA. While MMUA cannot speak for Minnesota Power, given the negotiations that occurred between NEMMPA members and Minnesota Power,

knowledge of membership goes back at least several years, and Minnesota Power acknowledges this. In response #2, however, it is stated that 14 members of NEMMPA were left off the list of “electric utilities” because they are ultimately served by Minnesota Power, and this is incorrect. The 14 individual utilities served by Minnesota Power were not included in Table 1 because by virtue of being a member of an MPA, they do not meet the express statutory definition of an “electric utility.” Minnesota Power again states that Brainerd and Hibbing should be added to Table 1 because they are not served by a wholesale provider required to report on the utilities’ behalf. Again, this ignores the statutory language adopted by the legislature. The statute does not base the definition of an “electric utility” based on who reports for whom, but it does exclude individual utilities if they are a member of an MPA.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kent Sulem", followed by a horizontal line.

Kent Sulem
Director of Government Relations and Senior Counsel
MMUA
Attorney #0231940