

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

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**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 Number: E-999/CI-23-151**

**CLEAN ENERGY ORGANIZATIONS SUPPLEMENTAL COMMENTS**

**February 7, 2024**

These comments are submitted in the above-referenced docket on behalf of the Clean Energy Organizations (CEOs), comprised of Fresh Energy, Sierra Club, and the Minnesota Center for Environmental Advocacy. In particular, we are responding to Supplemental Topics 5 and 6 in the Notice of Extended and Supplemental Comment Period issued Jan. 26, 2024:

5. Should municipal power agencies that do not supply energy, like Northeastern Municipal Power Agency, be considered an “electric utility” under Section 216B.1691 and thus be included in the Commission’s list of electric utilities?
  - a. 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?
6. 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?

- a. If so, what reporting requirements should the Commission consider?

CEOs believe that municipal power agencies that do not actually supply energy to their members should not be considered electric utilities under § 216B.1691. Our understanding from the representations of the Minnesota Municipal Power Association (MMUA) is that the Northeastern Minnesota Municipal Power Agency (NEMMPA) makes zero sales to its members.<sup>1</sup> As a result, MMUA has contended that NEMMPA cannot be subject § 216B.1691, which applies to a municipal power agency's sales to a distribution utility, nor are NEMMPA's members covered by § 216B.1691 because they are excluded as members of a municipal power agency. This interpretation is counter to the plain language of the statute and would create a significant and unwarranted gap in the coverage the law.

It was clearly the intent of the legislature to cover all Minnesota utilities when broadening the definition of "electric utilities" in amendments to section § 216B.1691, subd. 1(d) in 2023. (Majority Leader Long, author and sponsor of the bill, explicitly noted at the House Climate and Energy Finance and Policy Committee the bill's intent to "cover all utilities."<sup>2</sup>) The law therefore now includes those municipal utilities that are not members of a municipal power agency.

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<sup>1</sup> Comments of Mr. Bill Black, Commission hearing, Oct. 19, 2023.

<sup>2</sup> Statement of Majority Leader Jamie Long, House Climate and Energy Finance and Policy Committee, Jan. 18, 2023 hearing on H.F. 7, at minute 2:30 to 3:00.

The definition of a “municipal power agency” under state law is a municipal corporation created by two or more cities to exercise any of the powers of “acquisition, construction, reconstruction, operation, repair, extension, or improvement of electric generation or transmission facilities or the acquisition of any interest therein or any right to part or all of the capacity thereof.” Minn. Stat. § 453.52, subd. 8. The legislature expressly stated its intent that the law give cities power to form new municipal corporations with the authority to “finance and acquire facilities for the generation or transmission of electric energy, or interests in such facilities or rights to part of all of the capacity thereof.” Minn. Stat. § 453.51. However, it appears that the NEMMPA does not actually acquire, construct, reconstruct, operate, repair, extend or improve generation or transmission facilities or acquire in its own name the rights to any electric capacity. Instead, it appears to provide a service that connects municipal utilities with other actual suppliers/providers of the elements listed in Minn. Stat. § 453.51.

It is therefore appropriate for the Commission to find that, despite its name, NEMMPA is not actually a municipal power agency (and so not an electric utility), under Minn. Stat. § 216B.1691, subd. 1(d). NEMMPA’s member municipal utilities, therefore, are not members of a municipal power agency under the law and so are themselves electric utilities subject to the requirements of the section. If NEMMPA (and any other municipal power agencies that do actually supply power to their members, if others exist) agree to collect the necessary information from their members and file it with the Commission as the members’ agent, that would not be inappropriate. However, it would run counter to both the language and the clear intent of section 216B.1691 for municipal

utilities to be exempted from the law simply because they are members of something that calls itself a “municipal power agency” but which does not meet the statutory definition of a municipal power agency and which cannot comply with the obligations of a municipal power agency under section 216B.1691.

Sincerely,

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