

Staff Briefing Papers

Meeting Date March 14, 2024

Agenda Item 2*

Company All Electric Utilities

Docket No. E999/CI-23-151

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

Issues What clarifications, if any, must be made regarding electric utilities subject to reporting under Minn. Stat § 216B.1691?

Staff Trey Harsch

Trey.Harsch@state.mn.us

651-201-2232

✓ **Relevant Documents**

Date

PUC Notice of Comment Period

12/20/2023

Department of Commerce Initial Comments

01/19/2024

Minnesota Power Initial Comments

01/19/2024

SMMPA Initial Comments

01/19/2024

MRES Initial Comments

01/19/2024

MMUA Initial Comments

01/19/2024

CMPAS Initial Comments

01/19/2024

PUC Notice of Extended and Supplemental Comment Period

01/26/2024

MMUA Reply Comments

02/07/2024

CEOs Reply Comments

02/07/2024

Minnesota Power Supplemental Comments

2/13/2024

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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.

✓ **Relevant Documents**

MMUA Supplemental Comments

Date

2/14/2024

ISSUES

What clarifications, if any, must be made regarding electric utilities subject to reporting under Minn. Stat § 216B.1691?

BACKGROUND

On February 7, 2023, Governor Walz signed H.F. 7 into law¹ amending Minn. Stat § 216B.1691, Minnesota’s Renewable Energy Objectives. The amendments made to section 216B.1691 included the addition of the carbon-free standard (“CFS”), new reporting requirements for electric utilities’ biennial compliance reports, and several updates to definitions. Of note, the definition of an “electric utility” — the type of utility required to comply with the renewable energy standard² (“RES”) and the CFS — was modified to include cooperative electric associations or municipal utilities that are not members of a generation and transmission cooperative electric association (“G&T”), a municipal power agency (“MPA”), or a power district.

Section 216B.1691 requires the Commission to issue the necessary Orders that (1) detail the criteria and standards used to measure an electric utility’s efforts to meet the RES, the solar energy standard (“SES”), and the new CFS; and (2) determine whether the utility is achieving these standards.

On October 19, 2023, the Commission met to address two issues with implementing the amendments made by H.F. 7 to Minn. Stat. § 216B.1691: (1) the utilities and facilities that are subject to the RES and CFS, and (2) changes to reporting requirements under the new standards. The results of this discussion and the Commission’s decisions on these topics are reflected in the Commission’s December 6, 2023, Order.³

Through its discussion, the Commission identified several issues that required additional record development. Most notably, the Commission sought additional information on whether and how MPAs that do not sell electricity are subject to reporting under Minn. Stat § 216B.1691. Through an exchange that occurred in this docket between Minnesota Power and Hibbing Public Utilities,⁴ the Commission was made aware that the retail electric sales of municipal utilities that (1) are members of an MPA that does not sell power and (2) do not receive energy from another entity defined as an “electric utility” by Minn. Stat § 216B.1691, would be inadvertently excluded from RES and CFS compliance.

Through the bulleted text below, Staff provides a step-by-step explanation of this issue:

¹https://www.revisor.mn.gov/bills/text.php?number=HF7&session_year=2023&session_number=0&version=latest

² Also known as the “eligible energy technology standard.”

³<https://www.edockets.state.mn.us/edockets/searchDocuments.do?method=showPoup&documentId={F0ED408C-0000-C41E-916D-35E67056F047}&documentTitle=202312-201019-01>

⁴ See Minnesota Power’s October 11, 2023 letter, and Hibbing’s October 16, 2023 letter.

- Individual members of an MPA are not subject to the RES or CFS as an “electric utility” per the definition provided in Minn. Stat. § 216B.1691 Subd. (d) and thus, do not have any reporting obligations.
- MPAs do fall under the definition of an “electric utility” and are thus required by statute to report their compliance with the RES and CFS.
- In their compliance reports, electric utilities are required to prove that a percentage of the energy delivered to their retail Minnesota customers came from eligible energy technologies. To do this, utilities calculate their total retail electric sales from the prior year and retire the number of renewable energy credits (“RECs”) necessary to cover the specified percentage of energy sales required to have been sourced from eligible energy technologies.
- One MPA, Northeastern Minnesota Municipal Power Agency (“NEMMPA”), does not sell electricity, and thus has no retail electric sales to report and would not need to retire any RECs for RES compliance.
- Members of NEMMPA that are served by another reporting “electric utility” would have their energy sales accounted for within their power supplier’s RES compliance report. This is because energy sold to a distribution utility for distribution to the retail customers of the distribution utility is included in the statutory definition of “total retail electric sales.”
- Members of NEMMPA that are not served by another reporting “electric utility” are effectively exempt from reporting under Minn. Stat. § 216B.1691 as neither NEMMPA nor their power supplier would account for these energy sales.

On December 20, 2023, the Commission filed a notice of comment period in response to Order Paragraph 2 of the Commission’s December 6, 2023, Order with the following topics open for comment:

- Whether and how municipal power agencies are subject to reporting under Section 216B.1691 as an “Electric Utility.”
 - Should the Commission require each municipal power agency to identify which of its members’ electric sales are reported by another entity, which entity is reporting for each member, and the percentage of the member’s sales reported by that entity?
 - Should the Commission require each municipal power agency to identify any member’s retail power sales that are not reported for purposes of Minn. Stat. § 216B.1691?
 - Should the Commission require each municipal power agency to make a compliance filing identifying a point of contact (name, address, contact information) for purposes of enforcing compliance with Minn. Stat. § 216B.1691?
 - Are there other matters associated with municipal power agencies that should be reported to the Commission in connection with Minn. Stat. § 216B.1691?
- 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:

- The electric utilities they intend to report on behalf of; and
- 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.)

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

By January 19, 2024, the following parties provided initial comments:

- The Department of Commerce ("The Department")
- Minnesota Power
- Southern Minnesota Municipal Power Agency ("SMMPA")
- Missouri River Energy Services ("MRES")
- Minnesota Municipal Utilities Association ("MMUA")
- Central Minnesota Municipal Power Agency, doing business as Central Municipal Power Agency/Services ("CMPAS")⁵

On January 26, 2024, Commission Staff filed a notice of extended and supplemental comment period. After reviewing initial comments, Staff believed additional topics that more specifically addressed questions surrounding MPAs that do not sell power were necessary to ensure the record was sufficiently developed on this topic. The following supplemental topics were included in this notice:

- 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?
 - 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?

⁵ Pronounced "compass."

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

By February 7, 2024, the following parties provided reply comments:

- The Clean Energy Organizations ("CEOs")
- MMUA

By February 14, 2024, the following parties provided supplemental comments:

- Minnesota Power
- MMUA

Staff notes that there is a separate ongoing comment period taking place in this docket regarding the implementation of the CFS. For additional information about this separate comment period, please review the November 8, 2023, notice of comment filed in this docket.⁶

DISCUSSION

I. Municipal Power Agencies

Several parties, including MRES, MMUA, and CMPAS explained that the modifications made to Minn. Stat. § 216B.1691 did not change how reports under this statute were to be made and that MPAs must continue to report as "electric utilities" under the statute.

Regarding whether MPAs should be required to provide additional information on their members' retail electric sales, including any sales being covered by another electric utility's RES compliance report or any sales that are unaccounted for under Minn. Stat. § 216B.1691, SMMPA and MRES explained that such information may be difficult or impossible to obtain.

For example, SMMPA explained that there are several exceptions to the "all-requirements" provision of the power sales contract between SMMPA and its members that would allow its members to procure power from sources other than SMMPA. Additionally, SMMPA stated that its members have no contractual obligation to provide details on their third-party power supply arrangements other than for certain metering arrangements. Therefore, SMMPA could not guarantee that it would be able to accurately report the details of those non-SMMPA arrangements necessary for compliance with the new law.

⁶<https://www.edockets.state.mn.us/edockets/searchDocuments.do?method=showPoup&documentId={6079AF8B-0000-CA12-B6D8-B8C83EFF4CA4}&documentTitle=202311-200339-01>

MRES stated that it would be reasonable for any MPA with reporting obligations to identify in their annual compliance reports any member of the MPA in Minnesota receiving electric service from other power suppliers and to provide the name of the entity reporting such sales, if that information is known to the MPA. However, MRES noted that detailed information on other reporting entities and the amount and percentage of a member's electric sales to be reported by such entities may not be readily available. For MPAs that do not sell power to their members, MRES stated that such information could be provided in a separate filing to the Commission.

Both parties noted that the Commission should limit any requirement for an MPA to provide information on wholesale sales to its members from other power suppliers to only the information that is readily available to the MPA.

Having also noted that some member-specific information may not be readily available to MPAs, the Department recommended that the Commission require MPAs to report the percentage and volume of member sales being covered by another entity when that information is readily available to the MPA. The Department noted that this information will provide insight into how the electric utility is advancing their own efforts to meet the standard and help to determine whether the utility is achieving the standards. Additionally, the Department recommended that each MPA should identify all member power sales when that value is known, and should make a compliance filing identifying a point of contact for the purposes of enforcing compliance with Minn. Stat. § 216B.1691 **[Decision Option 1]**.

Staff notes that although no party objected to requiring MPAs to identify a primary point of contact for enforcing compliance with Minn. Stat. § 216B.1691, it was generally implied that such information would be provided in utilities' annual RES compliance reports.

MMUA explained that requiring an MPA to report the amount of electric sales a member is receiving from another entity is not required by statute, and may impose unnecessary difficulties on the MPA for no particular purpose. MMUA cited the definition of "total retail electric sales" in Minn. Stat. § 216B.1691 in support of their comment, noting that compliance with the RES and CFS does not rely on any one member's numbers, but instead is based on the combined sales of the MPA. Individual members of an MPA are not defined as an electric utility, and thus there are no statutory reporting requirements associated with the sales made by an individual member.

In their initial comments, MMUA provided additional information about the apparent statutory loopholes discovered by the Commission:

MMUA stated that it is aware of four municipal utilities which appear to fall in a loophole: Two of these utilities are members of a municipal power agency and thus are not electric utilities as that term is statutorily defined, and thus have no statutory obligation to report compliance with the RES and CFS. Two others are small utilities who are not members of a municipal power agency and thus are

*defined as an electric utility. However, they purchase their power through an entity that is not subject to Minnesota Statutes Section 216B.1691. All four of these utilities currently purchase or, in mid-2024, will begin purchasing their power from AEP, an energy supplier, but not a municipal power agency or any of the other types of entities defined as an electric utility under the statute.*⁷

MMUA recommended that any clarification to the scope of Minn. Stat. § 216B.1691 come in the form of a bill subject to the legislative process.

Minnesota Power cited a May 12, 2011, Commission Order⁸ which stated that Minnesota Power's sales to its wholesale municipal customers were subject to the RES and that Minnesota Power was obligated to retire RECs on behalf of these municipal utilities. Minnesota Power stated that the changes made to RES reporting in 2023 do not alter these requirements, and it is Minnesota Power's understanding that these changes, in part, expand the definition of an "electric utility" to cover all entities providing electric service in the State of Minnesota including "municipal utilities even if they are not part of a municipal power agency."⁹ Minnesota Power asserted that the same analysis from the Commission's 2011 Order should apply to all entities regardless of whether they are served by public utilities, MPAs, G&Ts, or are independent. Minnesota Power stated that 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."¹⁰

MMUA replied specifically to the comments made by Minnesota Power and noted that Minnesota Power's interpretation of the changes made to the statutory definition of "electric utility" was incorrect. MMUA argued that a correct interpretation of the new definition is that a municipal utility is considered an "electric utility" only if the municipal utility is not a member of a MPA, and not "even if" the utility is a member of an MPA as Minnesota Power had stated (Staff added emphasis).¹¹

II. Supplemental Comments on Municipal Power Agencies

In its Reply Comments, MMUA noted that the Commission's December 6, 2023, Order includes the 23 known municipal utilities that are not currently a member of an MPA. Additionally, MMUA explained that 22 of the 23 municipal utilities identified by the Commission are served by an IOU or a G&T that is obligated to report compliance with the RES.¹²

Regarding NEMMPA, MMUA stated:

⁷ MMUA Initial Comments, pp. 3-4.

⁸ May 11, 2011, Order in Docket No. E999/M-10-989.

⁹ Minnesota Power Initial Comments, p.2.

¹⁰ Minnesota Power Initial Comments, p.3.

¹¹ MMUA Reply Comments, p.2.

¹² Staff notes that Moose Lake was identified by MMUA as the municipal "electric utility" that is not served by an IOU or a G&T that is obligated to report compliance with the RES.

*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.*¹³

Thus, MMUA stated that, as a valid MPA, NEMMPA is an “electric utility” under Minnesota Statutes §216B.1691 [**Decision Option 2**].

MMUA explained that recognizing NEMMPA as an “electric utility” does not create a significant and unwarranted gap in the law as 14 of NEMMPA’s 16 members are served by Minnesota Power, and so their electric sales are, and will continue to be, included in Minnesota Power’s RES compliance report. NEMMPA’s remaining two members, Hibbing and Brainerd, are not served by an “electric utility” and are thus effectively exempt from RES and CFS compliance. MMUA stated “[i]f the legislature is concerned about the nominal number of utilities not covered by the scope of Section 216B.1691, new legislation could be introduced.”¹⁴

Minnesota Power and the Clean Energy Organizations (“CEOs”), which include Fresh Energy, Sierra Club, and the Minnesota Center for Environmental Advocacy, do not believe that NEMMPA should be considered an electric utility. The CEOs cited the definition of a municipal power agency under Minn. Stat. § 453.52, subd. 8:

"Municipal power agency" means a separate political subdivision and municipal corporation created by agreement between or among two or more cities or existing municipal power agencies pursuant to section 453.53 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.

The CEOs argued that NEMMPA does not acquire, construct, reconstruct, operate, repair, extend, or improve generation or transmission facilities nor does it acquire in its own name the rights to any electric capacity. Therefore, the CEOs stated that it would be appropriate to find that NEMMPA is not actually a municipal utility, and thus not an “electric utility” under Minn. Stat. § 216B.1691, subd. 1(d).

Minnesota Power stated that the amendments to Minn. Stat. § 216B.1691 were made to ensure that all electricity provided to Minnesota customers come from an entity covered under the definition of an “electric utility.” Because NEMMPA does not generate electricity, it is not

¹³ MMUA Reply Comments, p.3.

¹⁴ MMUA Supplemental Comments, p.2

obligated to monitor and report RES compliance on behalf of its members. Because of this, Minnesota Power believes that complying with the RES is the responsibility of the MPA's individual members.

Minnesota Power also cited Minn. Stat. § 645.17(1), noting that it would be “an absurd result” for previously covered municipal utilities to be exempt from the standards after expanding the definition of an “electric utility.”¹⁵

Staff notes that if the Commission were to determine that NEMMPA is not an “electric utility” under Minn. Stat. § 216B.1691, NEMMPA's members would be considered electric utilities and thus individually subject to RES and CFS reporting [**Decision Option 3**].

In response to the comments made by the CEOs, MMUA reiterated that despite not selling power, NEMMPA is a validly incorporated power agency. MMUA explained that the CEO's interpretation of statutory intent is not proven by any one legislator's comments and is not relevant in a situation where there is no statutory ambiguity. MMUA stated that any challenge to NEMMPA's validity would be a question for the courts and not the Commission.

III. Entities Reporting on Behalf of One or More Electric Utilities

The Department recommended that entities that intend to report on behalf of one or more electric utilities be required to report the name of the electric utilities they will report on behalf of, and the portion of each electric utilities' total retail electric sales covered by the report [**Decision Option 4**].

MRES and MMUA noted that while it would be reasonable to require an entity reporting under Minn. Stat. § 216B.1691 to identify the utility or utilities they are reporting on behalf of, the current reporting template already includes a field reporting this information.

Minnesota Power stated that it would be amenable to continuing to report for the wholesale municipal customers it serves. However, Minnesota Power requested clarification from the Commission regarding the best, and most consistent reporting process for the NEMMPA members it serves.

IV. Identification of Small Distribution Cooperatives Left Out of the Commission's List of Electric Utilities

No party was able to identify any small distribution cooperatives left out of the Commission's list of electric utilities included in its December 6, 2023, Order. However, in its reply comments, MMUA did note that Delano will leave its MPA sometime in 2024 as part of a decision made prior to the modification of Minn. Stat. § 216B.1691. When this occurs, Delano will be responsible for its own RES and CFS compliance as an “electric utility” under Minn. Stat. §

¹⁵ Minnesota Power Supplemental Comments, p.2.

216B.1691.

V. Other Comments and Concerns

MRES noted that its indirect sales to the City of Brewster, Minnesota should be reported separately on MRES' annual compliance report from the direct sales of MRES to its members used to calculate its total retail electric sales. MRES explained that Brewster was added to the list of electric utilities subject to Minn. Stat. § 216B.1691. Brewster is also not a member of MRES, but Worthington is. The cities of Worthington and Brewster have a power supply agreement under which Worthington sells and delivers all of the energy Brewster requires.

Because of this, MRES believes the retirement of RECs on behalf of Worthington also satisfies compliance for Brewster. MRES recommends excluding the sales by Worthington to Brewster in its annual compliance reports to prevent double counting **[Decision Option 5]**.

STAFF ANALYSIS

I. Additional Reporting for Municipal Power Agencies

Given the situation surrounding MPAs that do not sell power to their members, parties were asked several broad questions about MPA's reporting obligations as well as the need for MPAs to report additional information in their RES compliance reports. Through their responses SMMPA, CMPAS, and MRES confirmed that the updated definition of "electric utility" did not impact their obligation to comply with the RES and CFS as MPAs.

The Commission received two recommendations regarding the need to establish additional reporting requirements for MPAs:

- 1) The Department recommended requiring MPAs to report the percentage and volume of sales reported by another entity as well as the name of the other reporting entity when this information is known to the municipal power agency. Additionally, the Department recommended requiring MPAs to identify all member power sales when that value is known, and shall make a compliance filing identifying a point of contact for the purposes of enforcing compliance with Minn. Stat. § 216B.1691. The Department explained that this information would provide insight into how the electric utility is advancing their own efforts to meet the standard and help to determine whether the utility is achieving the standards. **[Decision Option 1]**
- 2) MMUA recommended allowing clarifications to the scope of Minn. Stat. § 216B.1691 to come from the Legislature. They explained that requiring an MPA to report the amount of energy a member receives from another entity is not required by statute, and may impose unnecessary difficulties on the MPA for no particular purpose. **[Take no action]**

The Commission may wish to require MPAs to provide the information proposed by the Department if it wishes to better understand the extent to which municipal energy sales are not

accounted for in RES compliance reports. However, Staff concurs with MMUA that RES and CFS compliance does not rely on MPA members' individual energy sales, but rather the energy sales of the MPA serving the municipalities. It is not clear how the information requested by the Department would assist with enforcing compliance with Minn. Stat. § 216B.1691 considering the requested information does not factor into an electric utility's compliance with the RES.

Should the Commission wish to require this information of MPAs, Staff would recommend removing the requirement for MPAs to submit a compliance filing identifying a point of contact for the purposes of enforcing compliance with Minn. Stat. § 216B.1691. There was general agreement on the record that such information is not needed due to its inclusion in utilities' compliance reports.

Staff would like to briefly address comments made by Minnesota Power. First, Staff concurs with MMUA that the correct interpretation of the new definition for an "electric utility" is that a municipal utility is considered an electric utility only if the municipal utility is not a member of a MPA, and not "even if" the utility is a member of an MPA as Minnesota Power suggested. This was the interpretation used by the Commission when it updated the list of electric utilities subject to Minn. Stat. § 216B.1691 with its December 6, 2023, Order.

Second, Minnesota Power argued that the same analysis used in the Commission's May 12, 2011, Order — which stated that Minnesota Power's sales to its wholesale municipal customers were subject to the RES and that Minnesota Power was obligated to retire RECs on behalf of these municipal utilities — should apply to all entities regardless of whether they are served by public utilities, MPAs, G&Ts, or are independent. Staff notes that the decision being referenced by Minnesota Power was a reaffirmation of the statutory definition of "total retail electric sales" under Minn. Stat. § 216B.1691, subd. 1 (f), which is defined as:

"Total retail electric sales" means the kilowatt-hours of electricity sold in a year by an electric utility to retail customers of the electric utility or to a distribution utility for distribution to the retail customers of the distribution utility. (Staff added emphasis)

Staff is unaware of, and the record does not contain, examples of the Commission applying different interpretations of this definition to the various electric utilities subject to Minn. Stat. § 216B.1691.

Although Minnesota Power believes that it would be unfair to allow members of an entity that does not provide electric service to be exempt from the standards, Staff notes that such an outcome would not be caused by the Commission's May 12, 2011, Order. It is Staff's understanding that the issue described by Minnesota Power would be caused by the statutory definition of an "electric utility" and would thus be unrelated to the Commission's May 12, 2011, Order.

II. Actions Regarding Municipal Power Agencies that do not Sell Power

The Commission must decide what actions to take regarding NEMMPA's status as an "electric utility" under Minn. Stat. § 216B.1691. Although both the CEOs and Minnesota Power argue that NEMMPA should not be categorized as an "electric utility," NEMMPA appears to meet the statutory definition of an electric utility. When a statutory provision is clear and unambiguous, the Commission lacks authority to adopt a contrary interpretation.

Even if the CEOs and Minnesota Power have correctly interpreted the Legislature's intent, the Commission is faced with statutory language that is quite clear:

"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).¹⁶

Minn. Stat. § 453.53 explains requirements for MPAs with Subd. 2 stating the following:

The agency agreement and a certified copy of the resolution of the governing body of each member shall be filed for record with the secretary of state. Upon the filing of the agency agreement and a certified copy of the resolution of the governing body of each member, the existence of the municipal power agency as a political subdivision of the state and a municipal corporation shall begin.¹⁷

Through the Secretary of State's website, Staff found that NEMMPA filed the documents described above with the Secretary of State in 1979. Based on the language provided in Subd. 2, this would mean that NEEMPA was established and has been legally recognized as a municipal corporation since 1979.

In their supplemental comments, Minnesota Power cited the state's absurdity doctrine, which states that the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.¹⁸ However, Minnesota Power claimed that by expanding the definition of "electric utility" the legislature created an exemption that otherwise did not exist. This is not true. Hibbing and Brainerd have been members of NEMMPA for some time, and as members of NEEMPA, they've been exempt from RES reporting. Because Minnesota Power was serving both cities, their energy sales were accounted for through Minnesota Power's RES compliance report. Minnesota Power has now reported that both cities no longer receive power from the Company. With or without the expanded definition of "electric utility" both Brainerd and

¹⁶ Minn. Stat. § 216B.1691 Subd. 1 (d).

¹⁷ Minn. Stat. § 453.53 Subd. 2.

¹⁸ Minn. Stat. § 645.17

Hibbing would still be effectively exempt from the standards for being members of NEMMPA. In other words, the expanded definition did not create this issue.

Despite the appearance of a statutory loophole, the record indicates that a Commission agenda meeting may not be the most appropriate venue for challenging NEMMPA's status as an MPA and thus as an "electric utility." Should the Commission find that NEMMPA is an "electric utility," Staff would also recommend adding NEMMPA to the list of utilities subject to Minn. Stat. § 216B.1691. It is not clear from the record in Docket No. E-999/CI-03-869 *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility's Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. § 216B.1691* why NEMMPA was not included in the Commission's original list of "electric utilities." However, going forward Staff believes that this list should be comprehensive and include every utility that falls within the statutory definition of an "electric utility."

If the legislative intent was to ensure that all energy sold to Minnesotans was accounted for through RES and CFS reporting, Staff notes that NEMMPA's status as an electric utility is not the only issue. As explained by MMUA in their initial comments, at least four municipal utilities purchase, or will begin purchasing, power from AEP — an energy supplier that is not included within the statutory definition of an "electric utility" and whose energy sales are thus excluded from utility's calculation of "total retail electric sales." No party responded to MMUA's comments about these additional reporting exemptions. Staff notes that, should the Legislature view this situation as an issue, a solution would likely come from a modification to the statutory definition of "total retail electric sales" to include energy sales from entities such as WAPA and AEP who do not fit within the definition of an "electric utility" but who do sell power to Minnesota's electric utilities for distribution to Minnesota customers.

III. Entities Reporting on Behalf of One or More Electric Utilities

Staff has been working to update the REC retirement reporting template consistent with Order Point 7 of the Commission's December 6, 2023, Order. A draft of this template was reviewed by the Department and sent to utilities. The reporting template for reporting year 2023 has been finalized and will be available on the Department of Commerce's website prior to the start of this agenda meeting.

Staff concurs with MRES and MMUA that at least some of the information being requested by the Department is currently included in the REC retirement reporting template. However, currently the template does not require utilities to report the portion of each electric utilities' total retail electric sales covered by the report. Instead, the reporting utility lists the electric utilities they are reporting on behalf of, and the total retail electric sales being covered by the report for each electric utility. So long as the reporting utility is reasonably able to calculate the portion of each electric utilities' total retail electric sales covered by the report, Staff does not see why this information could not be added to next year's reporting template. No parties stated that this information would be unavailable to reporting utilities.

Staff notes that the Commission could require reporting electric utilities to identify the utilities they intend to report on behalf of ahead of filing their reports. This requirement could be in addition to, or instead of, the Department's request. If reporting utilities indicate the portion of each electric utilities' total retail electric sales to be covered by their compliance reports, it may not be necessary to require them to indicate this again in their final reports. Such advance notice would be beneficial to Staff as it would provide information on which utilities require invitations to the PUC's M-RETS REC retirement accounts and need to be contacted regarding changes being made to the reporting template (if applicable).

Order Paragraph 2 of the December 6, 2023, Order did not specify whether the Commission had interest in reporting utilities identifying the electric utilities they will report on behalf of in advance of filing their final reports. If this was the Commission's intent, Staff proposes to require electric utilities subject to Minn. Stat. § 216B.1691 that intend to report on behalf of one or more other electric utilities to file a list of the electric utilities they intend to report on behalf of that includes the portion of each utilities' total retail electric sales to be covered by the final report. These reports should be provided within ten days after the publishing of this Order, and by February 1st each year going forward. Reports should be filed in the applicable YR-12 REC retirement docket [Staff provide **Decision Option 6**].

IV. Worthington and Brewster

The Commission may wish to clarify with MRES at the agenda meeting that they supply Worthington with 100% of its power, or at least enough to cover 100% of the power Worthington provides Brewster. Should either of these scenarios be true, Staff believes the Commission could approve MRES' request without issue. Staff would request that MRES continues to explain this situation in future REC retirement filings with the Commission so that this decision is not forgotten over time.

DECISION OPTIONS

1. Require municipal power agencies to report the percentage and volume of their members' sales reported by another entity as well as the name of the other reporting entity when this information is known to the municipal power agency. Each municipal power agency shall identify all member power sales when that value is known, and shall make a compliance filing identifying a point of contact for the purposes of enforcing compliance with Minn. Stat. § 216B.1691 (DOC, MMUA is opposed)
2. Clarify that NEMMPA is an electric utility and add NEMMPA to the Commission's list electric utilities subject to the RES and CFS. (MMUA)
3. Clarify that NEMMPA is not an electric utility and add NEMMPA's members to the Commission's list of electric utilities subject to RES and CFS. (CEOs, Minnesota Power)
4. Require entities that intend to report on behalf of one or more electric utilities to report the name of the electric utilities they will report on behalf of and the portion of each electric utilities' total retail electric sales covered by the report. (DOC)
5. Permit MRES to exclude the sales made by Worthington to Brewster in its annual compliance reports to prevent double counting. (MRES)
6. Require electric utilities subject to Minn. Stat. § 216B.1691 that intend to report on behalf of one or more other electric utilities to file a list of the electric utilities they intend to report on behalf of that includes the portion of each utilities' total retail electric sales to be covered by the final report. For the current 2023 reporting year, these reports shall be provided within ten days after the issuance of this Order. Future reports shall be filed by February 1 each year. These reports shall be filed in the applicable YR-12 REC retirement docket. (Staff proposed)