

# Minnesota Public Utilities Commission

## *Staff Briefing Papers*

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Meeting Date: April 6, 2017 ..... \*\*Agenda Item # 3

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Company: **Minnesota Municipal Power Agency (MMPA)**

Docket No. **ET6133/CIP-16-748**

In the Matter of the Petition for Exemption by Minnesota Municipal Power Agency from the Conservation Improvement Program Charges.

Issue(s): Should the Commission rescind the Department of Commerce's decision to deny a large customer facility exemption to the Minnesota Municipal Power Agency?

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### **I. Relevant Documents**

MMPA Initial Filing .....September 9, 2016  
Department of Commerce Decision .....December 29, 2016  
MMPA Appeal .....January 16, 2017  
Department of Commerce Comments .....February 7, 2017

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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.

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## **II. Statement of the Issues**

- Should the Commission rescind the Department of Commerce's decision to deny a large customer facility exemption to the Minnesota Municipal Power Agency?

## **III. Background**

Minnesota Statute §216B.241, subd. 1a(b) allows the owner of a large customer facility to petition the Commissioner of the Minnesota Department of Commerce (the Department) to exempt both electric and gas utilities serving the large customer facility from conservation improvement program (CIP) investment and expenditure requirements with respect to retail revenues attributable to the large customer facility.

Minnesota Statute §216B.241, subd. 1a(e) allow a public utility or owner of a large customer facility to appeal the decision of the Commissioner to the Commission. The Commission shall rescind the decision of the Commissioner if it finds the required investments or spending will: 1) not result in cost-effective energy conservation improvements; or 2) otherwise not be in the public interest.

On September 9, 2016, pursuant to Minn. Stat. §216B.241, subd 1a(b), Minnesota Municipal Power Agency (MMPA) filed a petition for exemption of CenterPoint Energy's (CenterPoint) CIP investment and expenditure requirements for their Shakopee Energy Park facility (SEP), a 46.7 megawatt natural gas peaking plant.

On October 17, 2016, the Department issued a Notice of Completion related to their review of MMPA's petition for exemption and determined it satisfied the Order<sup>1</sup> requirements.

On December 29, 2016, the Department issued their decision to deny the exemption, stating that MMPA's facility does not qualify as a Large Customer Facility per Minn. Stat. §216B.241 subd. 1(i) until it can show actual annual consumption that exceeds 500 million cubic feet of natural gas.

On January 16, 2017, MMPA filed an appeal of the Department's decision with the Commission.

On January 25, 2017, the Commission issued a Notice of Comment Period for January 25 - February 7, 2017. The Department submitted comments.

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<sup>1</sup> Docket Nos. E,G002/CIP-11-839, E015/CIP-11-847, G007,G011/CIP-11-848.

#### **IV. Parties' Comments**

##### ***MMPA Appeal – January 16, 2017***

In their appeal, MMPA included much of the same information from their initial petition to the Department. Their first contention is that the Shakopee Energy Park qualifies as a large customer facility, because they demonstrate that they expect the facility will exceed the statutory requirement of 500 million cubic feet of natural gas consumption annually<sup>2</sup>. Next, MMPA asserts they face economic and competitive pressures, stating that because MMPA is smaller than its competitors, incremental costs like CIP investment and expenditure requirements will have a disproportionate impact on their member utilities and customers. They also indicate that they dispatch generation assets to the Midcontinent Independent System Operator (MISO) wholesale electricity markets, which is an economically efficient market.

They also discuss their energy efficiency and conservation projects, stating they chose the generation system and designed the SEP with these in mind. SEP will use natural gas as its primary fuel source and will vent exhaust gas through emission control equipment in addition to capturing, storing, and recycling waste heat. The system also generates and distributes close to the load and offsets the need to purchase electricity.

MMPA also argues the facility should be exempt because MMPA's member utilities already exceed the CIP spending requirements. In 2014, member utilities spent 1.52% of gross operating revenues from electricity sales on CIP expenditures and have budgeted 1.8% for 2016. These both exceed the statutory requirement of 1.5%<sup>3</sup>. They state because their members already surpass required CIP spending, the denial of their petition will result in an economic disadvantage and increase electric rates to their retail customers, which is not in the public interest.

Finally, MMPA asserts the denial will cause MMPA to pay CIP charges on the SEP until 2019. If the denial is maintained, they will gather 2017 consumption data and apply for another exemption in October of 2018 that may go in effect January 1, 2019, thus costing their customers substantial amounts of money. Again, they state this is not in the public interest.<sup>4</sup>

##### ***Department of Commerce Comments – February 7, 2017***

The Department's comments discuss the procedural history, statutory background, Department and decision-making approach in addition to their specific comments on the appeal.

In their comments on MMPA's appeal, they focused on the definition of "Large Customer Facility." In the Department's view, since the facility could not show actual consumption data,

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<sup>2</sup> Minnesota Statute §216B.241, subd. 1a(b)(2).

<sup>3</sup> Minnesota Statute §216B.241, subd. 1c(b).

<sup>4</sup> According to MMPA's website, SEP is now operating and generating electricity.

they cannot approve the exemption. They state “to avoid prematurely approving a petition of this type, the Department requires applicants to submit actual consumption data.”

## **V. Staff Discussion**

MMPA’s request in their appeal is for the Commission to overrule the decision of the Department and grant an exemption for CenterPoint’s CIP charges related to retail sales for the Shakopee Energy Park. However, Minnesota Rules Part 7840.2000 provides several options for the Commission: “After review of the petition and comments, the commission shall issue an order that accepts, rejects, or modifies the department's decision, or that orders a contested case under Minnesota Statutes, chapter 14.”

Three issues need to be considered: 1) Does the Department’s denial of exemption negatively impact the public interest? 2) Should the Department consider reasonably estimated consumption when determining CIP exemptions? 3) Does the Commission want to decide these issues on the merits, or refer the matter back to the Department for reconsideration? 3) Should the Department consider reasonably estimated consumption when determining CIP exemptions?

### *Public Interest*

MMPA has indicated that the need to establish actual consumption data will prevent them from receiving a CIP exemption until at least January 1, 2019, because it will be March of 2018 until a full year’s worth of data is available. Staff believes that assumption is correct. It may result in substantial additional charges of \$0.2971 per dekatherm of natural gas consumed, which, in effect, would be a 10% increase in fuel costs, according to MMPA<sup>5</sup>. This, in turn, increases the cost paid by member retail customers. Between now and January 1, 2019, MMPA estimates their nominal cost increase to be substantial. For MMPA estimated additional cost, see its Trade Secret petition dated January 16, 2017.

Assuming MMPA’s annual consumption estimates are valid, it seems highly probable it would meet the 500,000 million cubic foot threshold required for a CIP exemption. If CIP charges were being applied to a facility that is meeting the consumption threshold, it may not be in the public interest, especially when the costs are substantial.

### *Projected vs. Actual Consumption*

Minnesota Statute §216B.241, subd. 1(i)(2) states “‘Large customer facility’ means all buildings, structures, equipment, and installations at a single site that collectively ... (2) consume not less than 500 million cubic feet of natural gas annually.” The statute is silent on whether actual consumption data is required to meet the threshold.

The Department has stated that they require actual consumption data to avoid “prematurely approving a petition of this type.” This seems to be a generally sound practice; however, given

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<sup>5</sup> Initial Filing—Petition For Exemption (September 9, 2016) (eDocket No. 20169-124707-02) at 2

the potential for public harm that may result from the CIP denial, one could argue that if the facility in question is reasonably likely to meet the threshold, it may be prudent to allow consideration of projected consumption. In this case, actual consumption would have to be significantly lower than projections to fall below the threshold.

All three of these factors come into the decision before the Commission. If the Commission determines there is no harm to the public interest, the Commission may accept the Department's decision. If the Commission determines there is harm to the public interest, the Commission may either reject the decision and approve the exemption, or reject the decision and direct the Department to reconsider the matter.

### *Commission Role*

CIP exemption appeals before the Commission have been limited, since the law allowing large gas customer facilities exemptions went into effect in 2011. One appeal regarding American Crystal Sugar, which came before the Commission in March 2012, differed in that the facilities in question were already operating and had actual consumption data. However, in the Order regarding the Crystal Sugar appeal, the Commission remanded the issue to the Department for further consideration, pending additional information from Crystal Sugar<sup>6</sup>.

The Commission's options, as previously stated, include accepting, rejecting, or modifying the Department's decision, or ordering a contested case proceeding. Accepting the Department's decision is straightforward, and the denial will remain in place. If the Commission rejects the decision, another decision will have to be made: does the Commission reject the decision of the Department AND make the determination that the exemption should be granted (as is requested by MMPA), or does the Commission reject the decision and remand it to the Department for further evaluation with instruction? With only one previous CIP exemption appeal, there is no significant precedent; however, staff recommends remanding the matter back to the Department with instructions to consider projected data and whether the facility would meet all other statutory requirements, should the Commission decide to rescind the decision.

In the alternative, if the Commission decides to reverse the Department's decision and approve MMPA's CIP exemption from CenterPoint's CIP program, the Commission could make its approval contingent on MMPA's ability to demonstrate that it has met Minnesota Statute §216B.241, subd. 1(i)(2) requirements at a specified date chosen by the Commission. MMPA would be required to make a subsequent compliance filing to the Department and Commission illustrating it has met the statute requirements. If MMPA meets the statutory consumption requirements, it would retain its CIP exemption status. If MMPA is unable to satisfy the statutory consumption requirements, the approval could be rescinded and MMPA would be subject to CenterPoint's CIP charges.

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<sup>6</sup> *In the Matter of the Petition of American Crystal Sugar for Conservation Improvement Program Exemption*, MPUC Docket No. E, G-002/CIP-11-839; G-004/CIP-11-981; and E-017/CIP-11-913, ORDER at 4 (March 30, 2012)

## **VI. Decision Alternatives**

1. Accept the Department's decision.
2. Reject the Department's decision and approve MMPA's petition for CIP exemption for the Shakopee Energy Park.
3. Reject the Department's decision and contingently approve MMPA's petition for CIP exemption for the Shakopee Energy Park, but at date of its choosing, the Commission would require MMPA to make to make a compliance filing illustrating whether it has met Minnesota Statute §216B.241, subd. 1(i)(2) requirements. The Commission would have the option to extend MMPA CIP exemption or rescind the CIP exemption based on the compliance filing results.
4. Reject the Department's decision and order the Department to reconsider MMPA's petition and take into account expected natural gas consumption that is more than likely to occur.
5. Modify the Department's decision in some other way.