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February 22, 2018

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East
Suite 350
St. Paul, MN 55101-2198

Re: Laurentian Energy Authority I, LLC
PUC Docket No. E002/M-17-551

Dear Mr. Wolf:

We represent Laurentian Energy Authority I, LLC and are eFiling and eServing the attached Comments of Laurentian Energy Authority I, LLC in Response to Petitions for Reconsideration and Certificate of Service on their behalf in the above-captioned matter.

Please feel free to contact me with any questions you may have.

Yours truly,

/S/

Jeffrey C. Paulson

JCP/pat
Enclosure

cc: Service List; LEA

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipshultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF THE PETITION OF NORTHERN STATES POWER COMPANY FOR APPROVAL TO TERMINATE THE LAURENTIAN PURCHASE POWER AGREEMENT	Docket No. E002/M-17-551 COMMENTS OF LAURENTIAN ENERGY AUTHORITY I, LLC IN RESPONSE TO PETITIONS FOR RECONSIDERATION

INTRODUCTION

Northern States Power Company ("NSP") petitioned the Minnesota Public Utilities Commission ("Commission") for approval to terminate existing biomass power purchase agreements (each a "PPA") with Laurentian Energy Authority I, LLC ("LEA") and Benson Power, LLC ("Benson") and to make related payments to LEA and Benson. After extensive comments, argument and deliberation, on November 30, 2017, the Commission voted unanimously to approve the petitions, and on January 25, 2018, the Commission issued its formal order approving the terminations and related requests ("Order"). On February 6, 2018, the Minnesota Timber Producers Association ("MTPA") filed a petition for reconsideration of the Order with respect to both the Benson and LEA PPAs. On February 9, 2018, The Associated Contract Loggers & Truckers of Minnesota ("ACLT") also filed for reconsideration of the Order with respect to both Benson and LEA. Several other parties filed for reconsideration, but those petitions are directed only to the Order as it relates to Benson.[1] LEA submits these comments only in response to the issues identified by MTPA and ACLT with respect to LEA.[2]

[1] North American Fertilizer and Beaver Creek Transport, Inc.; Minnesota Turkey Growers Association; and Carlson Timber and Land Clearing, et al. (Benson Power Biomass Suppliers).

[2] Some of the arguments made here apply equally to Benson and LEA, especially with respect to the legal standards for the Commission's decision and related statutory interpretations. There are some factual distinctions between Benson and LEA that may affect the application of some such standards. For example, LEA does not use turkey waste, its plants preexisted the biomass mandate and will continue to operate after any PPA termination, and it has reached termination agreements with its suppliers, unlike Benson.

DISCUSSION

I. Standards for Reconsideration.

As a starting point, petitions for reconsideration must set forth the specific questions on which the petition is claiming the Commission erred, or as to which the Order is "unlawful or unreasonable". Minn. Stat. Section 216B.27, subd. 2; Minn. Rules 7829.3000, subp. 2. Merely repeating prior arguments presented and rejected is not the intent of reconsideration; the purpose is to identify in detail why the Order is legally flawed. MTPA merely repeats its prior arguments in its petition; ACLT presents only one argument, also raised earlier. While the arguments are not new, LEA chooses to address them to some degree to demonstrate the continuing validity of the Order.

MTPA's petition for reconsideration raises two issues. First, MTPA argues that the Commission is required to use a broad public interest standard to assess the appropriateness of NSP's petitions, rather than the narrower criteria of Minn. Stat. Section 216B.2424, subd. 9 (2017). It then argues that adverse commercial effects to loggers and sawmills and adverse environmental effects from not removing certain timber from forests, which is currently used as biomass fuel, in the aggregate outweigh the acknowledged benefits to NSP's ratepayers from PPA termination. ACLT shares this perspective and argues that the Commission should undertake a broader environmental investigation under the Minnesota Environmental Protection Act, Minn. Stat. Sections 116D.01, et seq. ("MEPA"). Second, MTPA argues that a contract signed by NSP and the State of Minnesota with respect to the original Prairie Island legislation pursuant to Minn. Stat. Section 116C.773 (1994) remains valid and prevents NSP from terminating the LEA and Benson agreements. LEA addresses only the first of MTPA's arguments and ACLT's MEPA argument.

1. The Commission Used the Correct Legal Standard in Deciding the Merits of PPA Termination.

It is not disputed that Minn. Stat. Section 216B.2424, subd. 9 (2017) sets forth the requirements for LEA PPA termination and related Commission approvals. The provisions, enacted just last year, provide that NSP may petition the Commission for approval of the early termination of a power purchase agreement such as the LEA PPA, and the Commission may approve the early termination if it determines that

> (1) all parties to the power purchase agreement, or their successors and assigns, as applicable, agree to the early termination of the power purchase agreement or the purchase and closure of the facility; and
>
> (2) the early termination of the power purchase agreement or the purchase and closure of the facility is in the best interests of the customers of the public utility subject to this section, taking into consideration any savings realized by customers as a result of the early termination of the power purchase agreement or the purchase and closure of the facility and any costs imposed on the customers under paragraph (e).

(d) the commission's approval of a new or amended power purchase agreement under paragraph (b) or of the termination of a power purchase agreement of the purchase and closure of a facility under paragraph (c), shall not require the public utility subject to this section to purchase replacement amounts of biomass energy to fulfill the requirements of this section.

(e) A utility may petition the commission to approve a rate schedule that provides for the automatic adjustment of charges to recover investments, expenses and costs, and earnings on the investments associated with a new or amended power purchase agreement, the early termination of a power purchase agreement, or the purchase and closure of a facility. The commission may approve the rate schedule upon a showing that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the commission.

Subd. 9(c), (d) and (e) (emphasis added). Paragraph (c) clearly contemplates approval of PPA termination upon only (i) agreement by the parties, and (ii) a determination that termination is in the best interests of NSP's customers. Agreement of the parties has been obtained. The only question left for the Commission was whether early termination of the LEA PPA was in the best interests of NSP's customers. The Order concludes that early termination meets this standard, and, in fact, none of the parties seeking reconsideration contest that factual conclusion which is amply supported by the analysis of NSP and the Department.

Instead, petitioners argue that, notwithstanding the unambiguous language of the statute, the Commission should use a broader "public interest" standard, which includes consideration of downstream economic consequences as well as, in the eyes of ACLT, broader environmental effects.[3] Statutes are to be interpreted in accordance with their "plain meaning"; where there is no ambiguity about the words used, the letter of the law is not to be disregarded under the "pretext of pursuing the spirit". Minn. Stat. Section 645.16. The words of the statute here are explicit and exclude the consideration of any criteria for approval in addition to, or broader than, the "best interests" of NSP's customers.

In this respect, where the legislature wants the Commission to undertake consideration of environmental or other factors it has not hesitated to say so directly and openly. See Minn. Stat. Section 216B.2422, subd. 3 (environmental externalities); 216B.243, subd. 3(5) (certificate of need to include assessment of "socially beneficial" uses of the facility, including "to protect or enhance environmental quality"). By intentionally deciding not to include any such requirements here for PPA termination, the legislature made its intention clear: no assessment of such broader criteria was necessary or permissible here. The Commission is a creature of statute, and its jurisdiction and authority are limited by the boundaries set by its authorizing legislation; it cannot assume authority not granted by law or act in contravention, to or beyond the scope of,

[3] ACLT has already initiated a separate action in Cass County District Court against NSP, Benson and LEA pursuant to the Minnesota Environmental Rights Act based on its assertion of environmental harm from PPA termination.

the legislature's grant of power. As a result, it would be legally unjustifiable for the Commission to ignore the express prescription in Subdivision 9(c) above for approval of PPA termination by unilaterally adding its own sense of "public interest" or other criteria not set out by the legislature.

This conclusion is bolstered by the extensive history of the biomass statute itself. The LEA PPA was the product of the legislature's 1994 attempt to promote "closed-loop, farm-grown" biomass as one tool for reducing NSP's greenhouse gas emissions. Minn. Stat. 216B.2424 (1994) ("Biomass Mandate"). There were a number of issues and barriers encountered over the years by developers and NSP in trying to meet the Biomass Mandate. In response to these difficulties, the legislature repeatedly amended the Biomass Mandate; changes included allowing the use of waste products, reducing the required biomass fuel percentages, and provisions defining and affecting specific eligible projects. In fact, the Biomass Mandate has been amended sixteen times since enactment, representing in each substantive amendment another effort by the legislature to make its original objective achievable and sustainable. Some amendments specifically require Commission approval for certain proposed PPA terms or amendments or other implementation activities. See Minn. Stat. Section 216B.242, subd. 5(b)(2)(f), (g), and (h) (requiring contract approval by MPUC). In particular, the acquisition by LEA of its original contract and related amendments was made subject to MPUC approval, and the MPUC was given detailed criteria governing approval. Id., subd. 5a(b), (c) and (d). Subdivision 5a(e) requires NSP to amend the LEA PPA in specific ways and requires MPUC approval of the amendment. Subdivision 5a(f) requires amendment of the LEA PPA to provide for a fuel cost pass-through mechanism, and requires the Commission to specifically approve the amendment and recovery of NSP's related costs. The projects resulting from the Biomass Mandate are creatures of the legislature's deliberate attempt to work with biomass generation, and in this effort the legislature paid ongoing and meticulous attention to very specific fuel and contract terms and the structure and breadth of any related Commission approvals.

By 2017, the legislature, which tried for years to foster the success of projects like that operated by LEA, including the LEA PPA amendments mentioned above, knew exactly what it was doing in creating the opportunity for termination of that agreement. Having established explicit standards for the Commission in numerous other circumstances involving biomass projects, and the LEA PPA in particular, the Commission is forced to conclude that the legislature exerted a similarly thoughtful effort in devising the criteria for Commission approval of any LEA PPA termination. The legislature, being well-versed over the years in its own Biomass Mandate and the projects intended to satisfy it, made a knowing and explicit policy determination that termination of such contracts was acceptable on only a review of the effects on NSP's customers, to the exclusion of other factors. The legislature was fully aware of the environmental and economic effects of biomass generation, and the costs of such generation, and deliberately made a choice not to make PPA termination subject to environmental or broad social review.

It is worth noting that the legislature was not unaware of the possible effects of termination on affected communities. Minn. Stat. Section 116C.779, subd. 1(g) (2017), enacted in parallel with the termination process of subdivision 9 of the Biomass Mandate, specifically provides payment to LEA of up to $6.8 million per year from funds available to NSP for five

years to be used to "assist the transition required by the terminated power purchase agreement". Similar funding was provided for Benson. A study of the various consequences of the Benson plant closure is to be conducted by DEED as well and reported to the legislature for potential action by the legislature. This reinforces the conclusion that the legislature clearly established its policy for termination of the LEA PPA, and a means to consider and address any adverse consequences through use of the designated funds by local communities who are in the best position to specifically define and address those needs.

The implication by MPTA and ACLT that a balancing of interests using a broader standard would result in a rejection by the Commission of LEA PPA termination is also incorrect. Petitioners have presented no actual or quantifiable evidence of the alleged adverse economic or environmental effects from LEA PPA termination to compare with the demonstrable benefits from termination. The economic and environmental effects of LEA's PPA termination are lower than those of Benson, since its biomass usage is smaller and the plants will continue to operate. The use of the legislatively mandated transition funds will serve to address remaining adverse effects. LEA has already mitigated the primary direct economic consequences by agreeing with its suppliers to pay them $3.5 million for their transition to other markets. In addition, if the exercise advocated by petitioners were undertaken, the positive economic and environmental benefits from termination would also need to be considered; reducing biomass generation or replacing biomass fuels with natural gas or renewable sources leads to lower carbon emissions, and LEA's member communities will use the funds paid for termination to drive substantial and sustainable benefits for their utility customers and communities for generations.

There is no basis for imposing any standard for the Commission's decision as to PPA termination other than the limited criteria expressly set forth in the Biomass Mandate. The Order is within the Commission's authority and the Commission's determination that the benefits to NSP's customers support termination is unchallenged. Consequently, no basis for reconsideration is permitted.

II. MEPA And Similar Environmental Reviews Are Not Required

ACLT's petition for reconsideration focuses exclusively on its argument that the Commission should have required an Environmental Assessment Worksheet (EAW) or Environmental Impact Statement (EIS) with respect to the proposed contract terminations pursuant to MEPA. In ACLT's view, the proposed PPA terminations, closure of the Benson plant, loss of turkey litter management, and negative impacts on the biomass industry collectively constitute a "project", which in turn triggers MEPA's obligations for the Commission. ACLT's analysis is inaccurate.

It is worth noting at the start that ACLT cannot merge the LEA and Benson transactions together in order to create some larger aggregate effect that might trigger environmental consideration; each transaction is separate and must be viewed separately. LEA uses no turkey waste, so any concern or effect arising from turkey manure is irrelevant. LEA's plants are not closing or discontinuing operations; they will continue to serve their respective communities, using biomass to some extent, unlike the Benson purchase and closure. At most, the LEA

situation is one in which an existing generator loses load, reducing the need for as much fuel, or changes its fuel mix for operational, economic or environmental reasons, a frequent event for electrical generation facilities. ACLT cannot bootstrap this type of ordinary business activity into a MEPA "project" by combining it with Benson.

Legally, ACLT's arguments fail as well. First, the principles described in Section II, above, apply equally to ACLT's MEPA claims. Had the legislature intended for these simple contract terminations to be subject to prior environmental review under MEPA, it could very easily have said as much. By consciously choosing not to do so, the legislature made a deliberate decision to preclude such review. Generally, where two statutes, one general and one specific, may cover a similar subject matter, the specific statute controls the general statute. Connexus Energy v. Commissioner of Revenue, 868 N.W.2d 234, 242 (Minn. 2015). Subdivision 9 of the Biomass Statute, just passed in 2017, is specific as to the criteria required, or not required, for approval of PPA termination. MEPA is a general statute involving certain proposed "projects" and their environmental consequences. When it comes to what statute governs specific LEA PPA approval, the more recent statute's precise formulation governs, to the exclusion of other potentially conflicting laws.

Second, MEPA simply does not apply to the termination of the LEA PPA. In this respect, there is no "project" which meets the threshold for required review under MEPA. A "project" for MEPA purposes is to be defined by the "physical activity" to be undertaken and not the process of approving the project. Minn. Rules 4410.0200, subp. 65. The rules implementing MEPA outline in detail the various types of "projects" that require an EAW or EIS; see Minn. Rules 4410.1000, 4300 and 4400. All "projects" listed there involve the "construction" or "expansion" of a facility or "activity". With respect to forestry, only additional proposed "harvesting" of timber is referenced. Minn. Rules 4410, subp. 28. Electrical generating facilities are encompassed only where construction or expansion is contemplated. See Minn. Rules 4410.4300, subp. 3. Here, the mere termination of the LEA PPA will not involve any new physical activity, construction or expansion under the applicable rules which would mandate preparation of an EAW or EIS or related review by the Commission.[4]

In this situation, the simple termination of LEA's PPA, a contract already set to expire by its own terms in less than nine years, does not constitute any type of project or activity which requires MEPA review. Even assuming as alleged by ACLT that harvesting biomass for fuel has beneficial impacts on the forests, this is, at best, a remote consequence of legitimate business activity, and not the type of affirmative "definite, site-specific action that contemplates on-the-ground environmental changes" for which MEPA review is meant. In Re Petition for An Environmental Assessment Worksheet for the 33rd Sale of State Metallic Lenses in Aitkin, Lake & St. Louis Counties, 838 N.W.2d 212, 217 (Minn. App. 2013) (sale of mineral leases which might lead to mining was simply preliminary transaction not subject to review). Every human activity has some environmental effect; this does not mean that the entire universe of potential

[4] Discretionary review can only be obtained by filing a petition with the MEQB which meets specific substantive criteria. Minn. Stat. Section 116D.04, subd. 2(a)(c).

downstream consequences must be subject to formal governmental environmental review, and MEPA does not reach so far.[5]

ACLT's recital of a few occasions in the transcript from the November 30 deliberations where participants used the word "project" does not work to actually make either PPA termination a "project" under MEPA, and none of the casual references cited are an admission of any sort by the Commission, Department, NSP, Benson or LEA of "project" status under MEPA.

CONCLUSION

MPTA, ACLT and the other petitions for reconsideration have offered no new or valid reason for the Commission to reconsider or reopen the Order. The Commission should sustain the Order and deny reconsideration.

Respectfully Submitted,

PAULSON LAW OFFICE, LTD

By /S/

Dated: February 22, 2018

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[5] ACLT's other argument seems to be that if a person is engaging in a business activity with incidental environmental benefits, it cannot cease that activity without prior environmental review. By this reasoning, a logger who chooses to retire or change careers, reducing the removal of wood waste from forests, would have his or her actions subject to formal review, or an owner of a renewable energy facility would be prevented from ending production when the facility became no longer viable economically or technically without environmental approval. MEPA cannot be used as an affirmative weapon to coerce continued business or personal activities even if the activities have an arguably positive environmental effect.

CERTIFICATE OF SERVICE

I, Patricia A. Treseler, hereby certify that I have this 22nd day of February 2018, served a true and correct copy of the attached Comments of Laurentian Energy Authority I, LLC in Docket No. E002/M-17-551, on all persons on the attached list by electronic or paper filing as indicated.

/S/
Patricia A. Treseler

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