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October 24, 2019

VIA ELECTRONIC FILING

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of the Annual Filing of Cogeneration and Small
Power Production Rates
Docket No. E999/PR-19-09

Dear Mr. Wolf:

Minnesota Power hereby submits its Reply Comments in the above-referenced Docket. If you have any questions regarding this filing, please contact me at (218) 723-3448 or jwarmuth@mnpower.com.

Sincerely,

Jenna Warmuth
Senior Public Policy Advisor

JW:sr
Attach.

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of 2019 Cogeneration and
Small Power Production Reports

Docket No. E999/PR-19-09
Reply Comments

I. INTRODUCTION

On August 30, 2019 the Minnesota Public Utilities Commission (or, “Commission”) issued a Notice of Supplemental Comment Period in Docket No. E999/PR-19-09 (or, “Notice”). The Notice asked which, if any, of the trade secret designated information in Minnesota Power’s (or, “Company”) Annual Cogeneration and Small Power Production reports should be filed as public. Initial comments were submitted by Minnesota Power, Otter Tail Power Company, Xcel Energy, and joint comments were submitted by the Environmental Law & Policy Center and Institute for Local Self-Reliance (“Joint Commenters”). These reply comments are in response to the comments received. As Minnesota Power and other parties have stated in this docket, there is ample justification for why the information in Schedule A is non-public under the Minnesota Government Data Practices Act and the Commission’s Trade Secret policies and procedures.

II. RESPONSE TO SPECIFIC COMMENTS

The Company appreciates the initial comments filed by all parties in this matter. The Joint Commenters focused primarily on a legal analysis of the issue, with little discussion of the public interest. Minnesota Power believes that the law, as well as the public interest, favors continued use of the Trade Secret or Protected Data designation in regards to the topics in the docket.

- a) Minnesota Power, Otter Tail Power, and Xcel Energy revised 2019 annual cogeneration and small power production filings with the data each utility has proposed to make public and the rationale for these changes to trade secret designation.*

The Joint Commenters stated that the Company did not provide explanations for trade secret designations. The question posed by the Department of Commerce was what rationale was used for the changes to be made so that the data is no longer Trade Secret, not what justifies data remaining Trade Secret. Minnesota Power provided explanations

for Trade Secret changes in the Company's September 10, 2019, and October 14, 2019 filings.

- b) *Provide further explanation of how the specific information claimed to be trade secret does or does not qualify as trade secret under the Data Practices Act, Minnesota Statute Chapter 13.*

Comments were not filed in regards to this topic by the Joint Commenters.

- c) *Is any of the specific, trade secret-designated information required by Minnesota rules under part 7835.0500 (Schedule A); part 7835.0600 (Schedule B); and part 7835.1000 (Schedule G) not required by PURPA?*

The Joint Filers list several provisions in Schedule A and Schedule B and their counterparts in PURPA, but not for Schedule G. As stated in the Company's October 14 filing, FERC rule 18 CFR §292.302(d) applies in these circumstances. This rule states that there is no specific filing requirement, and instead defers to states.

- d) *Discuss the 'public inspection' requirement under PURPA and Minn. Rules 7835.1200 and whether that can be satisfied by granting developers interested in providing generation as qualifying facilities (QFs), and their consultants and advisors, access to the data required by the rules under a commission-approved nondisclosure agreement.*

The Joint Commenters raised several issues on the topic of 'public inspection.' The bold text is the position of the Joint Commenters, followed by Minnesota Power's responses.

I. The Plain Language of "Public Inspection" Only Supports One Interpretation Requiring Public Availability and Cannot be Rendered Nonpublic By Requiring Nondisclosure Agreement.

State statute (Minn. Stat. § 13.01, *et seq.*) controls over state administrative rules (Minn. R. 7835.1200). The information in question is protected and not subject to public disclosure under the Minnesota Government Data Practices Act for the reasons

provided in prior filings including that disclosure may unnecessarily lead to higher costs for customers.

II. FERC's Interpretation of "Public Inspection" Clearly Requires Public Access.

While federal rule 18 C.F.R. § 292.302(b) designates some information as being public, the applicable federal statute (Defend Trade Secrets Act, 18 U.S.C § 1839(3)) requires trade secret information to remain nonpublic. Here again, the statute controls over the rules. Additionally, under the federal statute if a state law exists that specifies if information should be public or nonpublic, the federal statute defers to state law.

III. If Commission Finds that Some Information Required by 18 C.F.R. §292.302(b) is not Required by Minnesota Rules, Commission Should Require Utilities to File, on a Biannual Basis, the Information Required by 18 C.F.R. § 292.302(b).

The Joint Commenters have not established why a required biannual filing would be in the public interest. Additionally, the Joint Commenters contend that Minnesota did not comply with the mandates under 18 CFR § 292.302(d) for its rules to act as a substitution. The first part (18 CFR §292.302(d)(1)) requires a public notice and opportunity for public comment. Public notice along with the opportunity for comment was provided in 1982. A copy of the notice was published in the Minnesota State Register and MPUC Docket No. 80-560 provides documentation showing the level of participation that took place. The second part (18 CFR §292.302(d)(2)) states that the state regulatory authority shall notify the Commission (FERC) within 30 days of making a determination. Minnesota Power does not know if the MPUC notified FERC. Even if the MPUC did not, the establishment of the "substitution of alternate method" is not dependent on notification to FERC.

IV. If the Commission Still Decides to Require Signing a Nondisclosure Agreement, Joint Commenters Recommend the Following Best Practices and Procedures.

In their comments, the Joint Commenters propose that if the Commission require a nondisclosure agreement (NDA), all utilities use the same NDA, as well as prescribing

where that NDA will be available, how to access it, and how to submit it. They also propose that there be no restrictions as to who can access both the agreement and filings. This access is essentially public access, and would not be in the public interest, as explained in Minnesota Powers October 14, 2019 Supplemental Comments. The Company also questions if a one-size-fits-all NDA is appropriate. There may be situations where the ability to add or remove language from the NDA would be appropriate. Minnesota Power has also tailored NDA's for specific customer needs and situations which would negate the benefits of a one-size-fits all NDA.

III. CONCLUSION

The Company appreciates the opportunity to respond to the Joint Commenters comments regarding trade secret designation in Annual Cogeneration and Small Power Production reports. The Company maintains that both state and federal law have consistently allowed for the trade secret designation of portions of these reports, including the projected marginal energy costs and avoided capacity costs.

Dated: October 24, 2019

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'J. Warmuth' with a stylized flourish at the end.

Jenna Warmuth
Senior Public Policy Advisor
218-355-3448
jwarmuth@mnpower.com

STATE OF MINNESOTA)
)ss
COUNTY OF ST. LOUIS)

AFFIDAVIT OF SERVICE VIA
ELECTRONIC FILING

SUSAN ROMANS of the City of Duluth, County of St. Louis, State of Minnesota, says that on the **24th** day of **October, 2019**, she served Minnesota Power's Reply Comments in **Docket No. E999/PR-19-09** on the Minnesota Public Utilities Commission and the Office of Energy Security via electronic filing. Parties for the above-mentioned Docket's E-Dockets Official Service List were served as noted.



Susan Romans