

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: June 6, 2013 Agenda Item # 8

Companies: Minnesota Power (“MP” or the “Company”)

Docket No. E015/M-12-920

In the Matter of Minnesota Power’s Petition for approval of its Boswell Energy Center Unit 4 Environmental Retrofit Project and Boswell 4 Environmental Improvement Rider

Issue(s): Is an Environmental Assessment Worksheet (“EAW”) mandatory, exempt, or discretionary under Minn. Stat. § 116D, Minn. Rules, Chapter 4410, and any other relevant statutes and rules?

If an EAW is discretionary, should the Commission require one?

Staff: Clark Kaml.....651-201-2246
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Relevant Documents

Minnesota Power Boswell Energy Center Unit 4
Environmental Improvement Plan August 31, 2012

Minnesota Pollution Control Agency (“MPCA”) Review of
Minnesota Power’s Boswell Unit 4 Environmental Improvement Plan March 1, 2013

MP Petition for Approval of a Boswell Energy Center Unit 4
Emission Reduction Rider March 7, 2013

Minnesota Center for Environmental Advocacy (“MCEA”)
Petition for Environmental Assessment Worksheet April 24, 2013

Environmental Quality Board (“EQB”) Letter May 1, 2013

Minnesota Center for Environmental Advocacy Exhibits to Petition May 1, 2013

Iron Range Legislative Delegation (“IRLD”) of the Minnesota House of
Representatives Comments May 16, 2013

Department of Commerce, Energy Facility Permitting
(the “DOC EFP”) Comments May 20, 2013

WPPI Energy (“WPPI”) Comments May 20, 2013

Minnesota Power Comments May 20, 2013

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Minnesota Chamber of Commerce (“MCC” or “Chamber”) Comments	May 20, 2013
Large Power Intervenors (“LPI”) Comments	May 20, 2013
Minnesota Pollution Control Agency (“MPCA”) Comments	May 20, 2013
MCEA Reply Comments	May 24, 2013

The attached materials are workpapers 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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Statement of the Issues

Is an EAW mandatory, exempt, or discretionary under Minn. Stat. § 116D, Minn. Rules, Chapter 4410, and any other relevant statutes and rules?

If an EAW is discretionary, should the Commission require one?

Background

On August 31, 2012, Minnesota Power (“MP” or the “Company”) filed a mercury emission reduction plan (the “Project”) for its Boswell Energy Center Unit 4 electric generating station (“BEC4”) under Minn. Stat. §§216B.68-688, referred to herein as the Minnesota Mercury Emission Reduction Act (“MERA”)¹. MP proposed to retrofit BEC4 to reduce multiple pollutants, and to comply with MERA and with the federal Environmental Protection Agency’s Mercury and Air Toxics Rule (“MATS”).

On March 1, 2013, the Minnesota Pollution Control Agency (“MPCA”) issued its environmental assessment of MP’s proposed mercury emissions reduction plan as required by Minn. Stat. § 216B.684.

On March 7, 2013, MP filed its petition for approval of an emissions reduction rider to recover the costs of the Project under Minn. Stat. §216B.683. Comments on the merits of the Project and the cost recovery rider were due on May 14, 2013,² and reply comments on May 31, 2013.

On April 24, 2013, the Minnesota Center for Environmental Advocacy, representing several signatories, (together the “Petitioners”) filed a citizen’s petition under Minn. Stat. § 116D.04 with the Environmental Quality Board (“EQB”) for completion of an environmental assessment worksheet (“EAW”) prior to the Commission’s action on MP’s proposed retrofit project.

On May 1, 2013, the EQB staff determined that the Commission is the appropriate governmental unit to decide the need for an EAW.

On May 6, 2013, the Commission issued a notice soliciting comments on whether an EAW is mandatory, exempt, or discretionary, and, if discretionary, whether the Commission should require an EAW.

On May 8, 2013, MCEA e-filed the exhibits referenced in its petition.

On May 16, 2013, the Iron Range Legislative Delegation of the Minnesota House of Representatives filed comments.

¹ Staff is using “MERA” in these briefing papers as a shorthand reference to the Mercury Emissions Reduction Act, as did a number of commenters. However, MERA is also often used in other contexts to refer to the Minnesota Environmental Rights Act, Minnesota Statutes, Chapter 116B.

² Initial comments on the merits of the Project and related rider were submitted by the Department of Commerce, Large Power Intervenors, the Minnesota Chamber of Commerce, and Environmental Intervenors (MCEA/IWLA/Fresh Energy/Sierra Club). Reply comments were not yet due at the time these briefing papers were completed.

On May 20, 2013, the Comments were filed by the Department of Commerce, the Minnesota Pollution Control Agency, Minnesota Power, WPPI Energy, the Minnesota Chamber of Commerce and the Large Power Intervenors.

On May 24, 2013, the MCEA filed reply comments. The Notice did not request reply comments.

The Commission has also received a number of public comments from governmental entities and private citizens on the EAW issue.

Relevant Statutes and Rules

Minnesota Stat. § 116D.04. Minnesota Environmental Policy Act (“MEPA”)

Minn. Stat. § 216B.6851-.688, part of the Minnesota Mercury Emission Reduction Act (“MERA”)

Minnesota Rules Chapter 4410. EQB environmental review rules implementing 116D.

Introductory Staff Comments

To the best of staff’s knowledge, determining the need for an EAW is an issue of first impression for the Commission³. The Commission has ruled on three other mercury reduction plan petitions under MERA (for Sherco 1 &2, Sherco 3, and Boswell 3)⁴ without requests for, or preparation of, an EAW.

There are very specific definitions and criteria in MEPA and the EQB rules implementing the statute which governs whether and when a major governmental action that may have significant environmental impact requires the preparation of an EAW. There are certain categories of projects for which an EAW is mandatory, some that are exempt, and some for which an EAW is discretionary.

The statutes and rules allow for a petition by at least 100 individuals who reside or own property in Minnesota to submit a request for an EAW to the EQB, as has happened in this instance. The EQB then determines whether the citizen’s petition meets the requirements of the statutes and rules, and if so, which governmental unit should make the determination on whether an EAW is required. The EQB staff has determined the Commission is the appropriate governmental unit.

In the instant circumstances, the Commission has 30 days from receiving the petition in which to make a decision on the need for an EAW, and must notify the project proposer, the petitioner, and other relevant entities of its decision within 5 days. While the citizen petition is pending, a project may not be started and no final governmental decision may be made to approve a project.

³ Environmental review for power plants and transmission lines in Certificates of Need and Routing/Siting proceedings is provided for in special alternative review provisions of statute and/or EQB rules.

⁴ Dockets E-002/M-09-1456, E-002/M-07-1601, and E-015/M- 06-1501 respectively.

As noted above, the MCEA filed reply comments that were not specifically requested. The Commission may want to decide whether to consider these reply comments.

Party Positions

Minnesota Center for Environmental Advocacy

The MCEA requested the preparation of an environmental assessment worksheet under Minn. Stat. § 116D.04 subd. 2a(c) on the basis that the proposed action has the potential for significant environmental effects.

The MCEA claimed that in an effort to extend the life of BEC4, Minnesota Power has proposed an “extensive environmental retrofit” project to cost \$350 Million. This retrofit has the potential for significant environmental effects. Absent the project, BEC4 would need to be retired in 2016 and the pollutant emissions from the facility would cease. With the project, BEC4 would continue to operate until at least 2036. As a result, approval of the project will lead to significantly more pollutant emissions to both air and water sources, with the potential for significant impacts on the environment and human health.

MCEA argued that the Minnesota Environmental Policy Act (“MEPA”) requires that environmental review be conducted prior to making major governmental action approving any project that has the potential for significant environmental effects. To date, no MEPA review has been conducted for this project.

Environmental Review of Alternatives

The MCEA stated that the proposed project is described as a “multi-pollutant control” project, which includes installation of a semi-dry flue gas desulfurization system, a fabric filter, and power active carbon injection system. Minnesota Power is seeking approval of the project pursuant to Minn. Stat. §§ 216B.6851 and 216B.686. Under the applicable statute, Minnesota Power is required to submit “one or more” alternatives to its proposed plan. Minnesota Power’s filing described two alternatives to its project: (1) a 400 MW combined cycle natural gas plant; and (2) part ownership of an 800 MW combined cycle natural gas plant. Minnesota Power did not evaluate a “no action” alternative, an alternative that included energy efficiency, nor renewable energy sources such as wind, solar, biomass and additional hydroelectric power.

MCEA stated that the alternatives described in Minnesota Power’s filing were evaluated based on economic and system benefits. Neither Minnesota Power nor the Commission has provided any analysis of the environmental and human health impacts of the project as compared to a “no action” alternative or other alternatives identified by MP.

MCEA noted that the MPCA reviewed the proposed project pursuant to Minn. Stat. § 216B.684. It did not provide MEPA environmental review of the project. In a report to the Commission, the MPCA evaluated some of the benefits from pollution reductions that result from the proposed project as compared to continued “business as usual” operations of the plant. MCEA argued that this is not possible after 2016, so the report is of little value as an environmental assessment. The MPCA did not describe environmental health benefits of any of the alternatives to the

proposed project that are realistic and possible to implement, including the “no action” alternative, the natural gas alternatives identified by MP, or other alternatives that would rely on efficiency and renewables.

The MCEA stated that no environmental review has been completed for MP’s proposed retrofit proposal which will extend the life of BEC4 until at least 2036. Because the project has the potential for significant environmental effects, environmental review is required prior to any government agency taking steps to approve the project or any aspect of the project.

Potential Environmental Effects

MCEA stated that the potential environmental effects of MP’s proposal are many and significant. For the purposes of the description required by Minn. Rule 4410.1100, MCEA provided a comparison between emissions from the project as proposed, emissions from a “no action” alternative and emissions from MP’s 400 MW natural gas replacement alternative.

Proposed Project vs. No Action and Natural Gas Alternatives

MCEA stated that the proposed project will emit significantly more air pollution than either the “No action” alternative or the natural gas alternative. According to the Technical Support Document supporting the proposed Clean Air Act permit for the project, BEC4 has the potential to emit the following annually through 2036 if the project is approved and proceeds:

651 Tons	Particulate Matter (“PM”) less than 10 micrometers by larger than 2.5 micrometers in diameter (“PM 10” or “coarse particles”)
561 Tons	PM less than 2.5 micrometer in diameter (“PM2.5” or “fine particles”)
3,647 Tons	Nitrogen Oxides (“NO _x ”)
841 Tons	Sulfur dioxide (“SO ₂ ”)
4,204 Tons	Carbon Monoxide (“CO”)
96 Tons	Volatile Organic Compounds (“VOCs”)
6,028,000 Tons	Greenhouse Gases (“GHG”) measured in Carbon Dioxide equivalents (“CO ₂ e”)

MCEA provided the following comparison of emission of the proposed project, the no action alternative, and the 400 MW natural gas plan alternative as of 2016:

	Proposed Life Extension Project	“No Action	400 MW Gas Plant
PM10	5611	0	40
PM2.5	561	0	40
NO _x	3,647	0	82
SO _x	841	0	35
CO	4,204	0	50
VOCs	96	0	21
CO2e	6,028,000	0	1,800,000

MCEA provided the following comparison over the life of the proposed project, 2016-2036:

	Proposed Life Extension Project	“No Action	400 MW Gas Plant
PM10	11,781	0	840
PM2.5	11,781	0	840
NO _x	76,587	0	1722
SO _x	17,661	0	735
CO	88,284	0	1050
VOCs	2,016	0	441
CO2e	126,588,000	0	37,800,000

The MCEA noted that in 2010, emissions of CO₂e from all sources within the state of Minnesota totaled 155 million tons. It argued that this one decision could add the equivalent of over 80% of an entire year’s worth of emissions to the atmosphere from all Minnesota sources. The alternative 400 MW combined cycle natural gas plant would emit less than one-third of that amount.

Comparing the emissions between the proposed project and the 400 MW gas plant alternative, MCEA stated that after spending \$350 million on BEC4, the increased emissions would have a detrimental and significant impact on the health and environment of Minnesota. It stated that in addition to the air pollution emissions, the proposed project will result in significant amounts of toxic ash generation and water pollution, both of which could be avoided by the alternatives.

Potential Environmental Effects

The MCEA stated that the pollutants emitted by the proposed project have the potential for significant adverse effects on the environment and on human health. The MCEA provided a short summary of some of the potential environmental and human health impacts from the pollutants that will result from the project.

Carbon Dioxide Equivalents

The MCEA stated that the project would make BEC4 one of Minnesota's largest single-source contributors to greenhouse gas pollution. Anthropogenic GHG emissions are known to contribute to climate change. GHG emissions remain in the atmosphere and will affect the climate for many decades. Continued emission of GHG are contributing to the environmental and public health problems caused by climate change which are numerous, severe, and irreversible. According to the EPA, in the Midwest such impacts include, but are not limited to: extreme weather events; climate-sensitive disease outbreaks; air quality deterioration; water quality deterioration; more intense precipitation events leading to flooding, property damage, and fatalities; increased periods of drought; declining lake levels; and changes causing stress to forests, habitat, and wildlife. Human health impacts include increased heat-related deaths, increased risk of certain diseases spreading and increased health problems due to worsening air quality.

Nitrogen Oxides and Volatile Organic Compounds

The MCEA stated that these compounds can combine in the presence of sunlight to create ground level ozone. According to the EPA:

Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, congestion. It can worsen bronchitis, emphysema, and asthma. "Bad" [ground-level] ozone also can reduce lung function and inflame the linings of the lungs. Repeated exposure may permanently scar lung tissue. . . . Ground-level or 'bad' ozone also damages vegetation and ecosystems. It leads to reduced agriculture crop and commercial forest yields, reduced growth and survivability of tree seedlings, and increased susceptibility to diseases, pests and other stresses such as harsh weather. In the United States alone, ground-level ozone is responsible for an estimated \$500 million in reduced crop production each year. Ground-level ozone also damages the foliage of trees and other plants, affecting the landscape of cities, national parks and forests, and recreation areas.

Particulate Matter

The MCEA stated that according to the EPA:

Numerous scientific studies have linked particle pollution exposure to a variety of problems, including:

- Premature death in people with heart or lung disease,
- Nonfatal heart attacks,
- Irregular heartbeat
- Aggravated asthma
- Decreased lung function, and
- Increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.

PM emission have negative environmental impacts, including impairing visibility by causing haze, causing lakes and streams to become acidic, depleting nutrients in soil, damaging sensitive forests and farm crops, and affecting diversity within ecosystems. By blackening ice and snow and thereby reducing the reflection of solar radiation, PM is also a likely factor in climate change.

Sulfur Dioxides

According to the EPA, even short-term exposures to SO₂, ranging from 5 minutes to 24 hours, can lead to various respiratory problems, including bronchoconstriction and increased asthma symptoms, which are especially pronounced in persons exercising or playing. There is also a connection between short-term SO₂ exposure and “increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly, and asthmatics.

SO₂ combined with NO_x are the major causes of acid rain, which acidifies soils, lakes and streams, as well as corrodes buildings and monuments and contributes to haze.

Toxic Coal Ash

Ash generated by the project will be laden with toxic chemicals potentially requiring disposal of hazardous waste. Coal ash contains a number of toxicants, including arsenic, lead, mercury, and selenium, as well as aluminum, barium, boron, and chlorine. The chemicals can cause cancer and neurological damage in humans and harm and kill wildlife, especially fish and other water-dwelling species. They can leach into water sources and waterways, but are also dangerous if inhaled. Risks of coal ash toxins increase with prolonged exposure and include cancer, heart damage, lung disease, respiratory distress, kidney disease, reproductive problems, gastrointestinal illness, birth defects, impaired bone growth in children, and behavior problems.

Exposure to toxic coal ash can have a detrimental effect on the environment, as it may decrease birth rates, slow development, cause tissue disease, and even kill plants and animals, leading to changes in wildlife concentrations and disruptions in entire ecosystems. Coal ash pollution builds up in exposed animals and plants, and makes its way up the food chain when the polluted organisms are eaten.

Water Consumption and Water Quality

MCEA stated that there is little information available about the exact impact the project will have on water quality and water consumption. The MPCA’s review states “changes in pollution levels for other media, notably water, as a result of the [project] are not likely to be significant.” However, the MPCA did not compare on-going water consumption and wastewater discharge of extending BEC4’s life with retirement or a cleaner alternative.

MCEA stated that there is ample evidence showing that coal combustion results in water pollution that impacts the environment and human health. Coal combustion also consumes enormous amounts of water, which has the potential for significant environmental effects.

Wastewater pollutants following coal combustion are similar to pollutants in coal ash and include arsenic, boron, cadmium, chlorides, chromium, copper, iron, lead, manganese, mercury, nitrogen, phosphorus, selenium, total dissolved solids, zinc, and lead to conditions such as decreased oxygen levels in water and acidic conditions. Many of these pollutants can bioaccumulate within the environment, leading to increased risks for human health when humans consume animals such as fish. They have been linked to ecological problems such as fish kills, and developmental and reproductive failure in fish, reptiles and birds.

The U.S. EPA estimates that the total amount of toxic pollutants “released in wastewater discharges from coal-fired plants is . . . significant and raises concerns regarding the long-term impacts to aquatic organisms, wildlife, and human health that are exposed to these pollutants.” The MCEA stated that barium is commonly found in scrubber wastewater, and “has been linked to heart problems and diseases in other organs.” A 2007 EPA risk assessment found that people living near coal ash ponds who drink from wells may have a 1 in 50 change of getting cancer from drinking water polluted by arsenic.

The MCEA stated that about half of the water the U.S. withdraws from its rivers, lakes and freshwater aquifers daily, about 205 billion gallons, is used to cool coal-powered plants. This water demand combines with population pressures and agricultural needs to strain water resources, especially in times of drought and heat waves. During the 2011 Texas drought, at least one plant had to cut its electrical output, other plants had to bring in water from new sources, and other predicted decreased electrical capacity if conditions persisted.

MCEA stated that a full record that analyzes the potential water impacts of the BEC4 life extension project as compared to alternatives is required before a reasoned decision can be made on the proposed project.

Minnesota Pollution Control Agency

The MPCA stated that the questions raised in the petition can be addressed through the statutory review required for an emission reduction project under by Minn. Stat. 216B.1692, subd. 4. The MPCA filed its report under that section on March 1, 2013, and indicated that it will provide the PUC with any additional assistance necessary to address the issues raised in the petition.

The MPCA stated that the multi-pollutant emission reduction plan and rate rider request under consideration by the PUC is authorized under two statutory provisions (Minn. Stat. 216B.1692 and Minn. Stat. 216B.68 to 688) that each require a project at a large electric generating utility to achieve air emission reductions with a demonstrated environmental benefit in order to qualify for cost recovery through a rate rider. In particular, the BEC4 project under consideration is required to achieve compliance with the federal Mercury and Air Toxics Standard and will satisfy the goals of the Minnesota’s Mercury Emissions Reduction Act for BEC4. The MPCA stated that its review of the emissions reduction project demonstrated that significant air emission reductions will occur as a result of the project, which is an environmental benefit.

The MPCA stated that it believes the EAW petition incorrectly used a potential future level of air emissions when discussing the baseline for comparison of the potential environmental effects of the project. The petition proposes to compare the post- project emissions to a potential future

scenario where the BEC4 is no longer operating. MCEA stated that BEC4 might no longer operate if the proposed emission reduction project were not approved, thereby requiring BEC4 to shut down for failure to comply with MATS Rule. This comparison to a potential future state is not appropriate to determine if a potential for significant environmental effect exists under Minn. Stat. 116D.04. The MPCA recommends the PUC compare the pre-project air emissions to the post-project air emissions to determine whether the project may have a potential for significant environmental effect. Such an approach would be consistent with previous MPCA analysis of EAW petitions and avoid significant confusion for responsible government units to determine the appropriate environmental baseline to use in their analysis.

The MPCA recommended that the PUC not adopt the proposition in the EAW petition that the BEC4 emission reduction plan is a “life-extension project.” Under the federal Clean Air Act, the term “life-extension project” has a specific definition. Adoption of the term in a state environmental review proceeding would create significant confusion for MPCA’s stakeholders and incorrectly implicate Clean Air Act permitting provisions to retrofit projects undertaken to comply with new state or federal regulations. The MPCA stated that it is troubled with the potential precedent that in Minnesota, any project undertaken to comply with new state or federal regulations would be defined as a “life-extension” and potentially trigger environmental review. Such a precedent would create significant challenges for the MPCA to implement state and federal environmental programs.

The MPCA stated that the air quality permit review for the BEC4 project was not subject to the preparation of a mandatory EAW or a mandatory Environmental Impact Statement under Minnesota’s environmental review rules for which the MPCA is the designated responsible governmental unit. The preparation of a discretionary EAW was also not justified.

Department

Regulatory Process and Procedures

The MEPA requires an assessment of the potential environmental impacts of proposed governmental actions, as an aid to the decision-making process for such actions. According to Minnesota Statute § 116D.04, a governmental action is an activity that is “wholly or partially conducted, permitted, assisted, financed, regulated or approved by units of government, including the federal government.” The Department noted that Minnesota Rules Chapter 4410 have been adopted to implement the environmental review requirements of MEPA.

The Department noted that under the schema developed by Chapter 4410, governmental actions associated with certain defined activities require a specific type of environmental review (mandatory categories). Governmental actions associated with other defined activities are exempt from environmental review (exemption categories). If the proposed governmental action is neither mandatory nor exempt, environmental review is discretionary. The Department noted that according to Minnesota Rule 4410.1000, subp. 3, when environmental review is discretionary, an EAW is prepared if the governmental unit with approval authority over the proposed project determines “that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects.” If the determination is made in response to a petition, the responsible governmental unit (“RGU”) must consider the

evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU.

Citing to Minnesota Rule 4410.1100, subp. 6 and 4410.1700, subp. 7, the Department stated that in considering the evidence, the RGU must consider:

- A. The type, extent, and reversibility of environmental effects;
- B. The cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
- C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs (Environmental Impact Statement).

DOC EFP Analysis and Comments

The DOC EFP stated that it believes that the Commission's decision on MP's proposed retrofit project meets MEPA's statutory definition of a governmental action. The DOC EFP stated that it believes MP's proposed retrofit project does not require an EAW (or EIS) and is not exempt from environmental review. With respect to Chapter 4410 projects that are electric generating facilities, the proposed project does not involve the construction of an electric power generating plant of greater than 25 megawatts in capacity (mandatory EAW), greater than 50 MW in capacity (Power Plant Siting Act), or less than 5 MW in capacity (exempt). The DOC EFP stated that this assessment is supported by two facts:

- 1) MP is not proposing to increase the capacity of BEC4, thus there is no change in capacity to be compared to Chapter 4410 categories; and
- 2) MP is not proposing to construct an electric generating facility; rather, MP is proposing to modify an existing facility.

The DOC EFP noted that the terms "expansion" and "modification" are used in Chapter 4410, but they are not used in reference to electric generating facilities. With respect to Chapter 4410 projects that generate air pollutants, the proposed project does not entail the construction of a stationary source facility that generates more than 250 tons per year of air pollutants, or a modification of a stationary source that increases the generation of air pollutants by 250 tons per year (mandatory EAW). Additionally, the proposed project does not entail the construction of a

stationary source facility that generates more than 100,000 tons per year of greenhouse gases, or a modification of a stationary source that increases the generation of greenhouse gases by 100,000 tons per year (mandatory EAW).

MP is not proposing to construct a new facility; they are modifying an existing facility, BEC4. The DOC EFP stated that its understanding is that the proposed retrofit of BEC4 will not increase the unit's generation of air pollutants or greenhouse gases. The generation of air pollutants, as such are created by the combustion of coal, would continue with the continued operation of BEC4 but are not anticipated to increase.

Based on its analysis, DOC EFP believes that environmental review for MP's proposed retrofit project is discretionary. It stated that the touchstone for a discretionary EAW is the potential for significant environmental effects. Whether an EAW should be required entails an analysis of the factors in Minnesota Rule 4410.1700, Subpart 7. The DOC EFP stated that factors C and D are most relevant to the Commission's decision, since the BEC4 retrofit project is subject to review and approval pursuant to specific statutory provisions as applied through Docket No. E-015/M-12-920.

The DOC EFP noted that the Minnesota Environmental Policy Act states:

Subd. 7. Required consideration. Regardless of whether a detailed written environmental impact statement is required by the board to accompany an application for a permit for natural resources management and development, or a recommendation, project, or program for action, officials responsible for issuance of aforementioned permits or for other activities described herein shall give due consideration to the provisions of Laws 1973, chapter 412, as set forth in section 116D.03, in the execution of their duties.

The consideration of the degree to which the Commission's duties under Minnesota Statute 116D.03 are met through existing processes is pertinent to the question of whether a discretionary EAW should be prepared. The DOC EFP stated that it has not evaluated the record in Docket No. E-015/M-12-920 and takes no position on whether the review under that docket fulfills these duties.

No Action Alternative

The DOC EFP stated that contrary to statements made in the petition, a discretionary EAW would not include an evaluation of a "no action" alternative or any alternative to the proposed project. An EAW is a brief document prepared in worksheet format that is designed to rapidly assess the environmental effects that may be associated with a proposed project. The EAW serves primarily to aid in the determination of whether an EIS is needed for a proposed project and as a basis to begin the scoping process for an EIS.

Minnesota Power

Overview of the Position

Minnesota Power is implementing a pollution control retrofit Project on BEC4 to meet the requirements of the MERA and the federal Mercury and Air Toxics Standards Rule promulgated under the Clean Air Act. MP argued that to grant an EAW in this Docket goes beyond the Legislative directive under MERA and is contrary to Commission precedent. Although the EAW Petition alleges that the Commission has not provided “any analysis of the environmental and human health impacts of the project” compared to the alternatives, MERA clearly establishes when and how this Commission review occurs.

MP argued that the EAW Petition mischaracterizes the Project as an effort to “extend the life” of BEC4.

MP noted that the Commission has ongoing oversight over the implementation and operation of Minnesota Power’s mercury emissions reduction under MERA and subsequent cost recovery requests as well as plenary authority over Minnesota Power’s rates and service as a regulated public utility under Minn. Stat. Ch. 216B. In addition, other agencies, including the Minnesota Pollution Control Agency, Army Corps of Engineers, Itasca County Soil & Water Conservation District, Minnesota Board of Water & Soil Resources, Minnesota Department of Natural Resources, and the Public Service Commission of Wisconsin have previously reviewed and approved the Project.

MP’s comments included an Appendix A discussing the EAW Petition’s failure to include material evidence that the Project may have the potential for significant environmental effects. The Retrofit is actually an environmentally beneficial project that will reduce emissions from the unit.

MP argued that application of the criteria that the Commission must use to determine whether a project may have the potential for significant environmental effects establishes that there is no such potential, and that an EAW is unnecessary even if the Commission was not evaluating the Project under MERA.

Legislative Mandates for Environmental Analysis

MP argued that to grant a discretionary EAW in this docket goes beyond the Legislative directive under MERA and may potentially impose additional costs on Minnesota Power’s ratepayers. Although the EAW Petition alleges that the Commission has not provided “any analysis of the environmental and human health impacts of the project” compared to the alternatives, the MERA clearly established when and how this Commission review occurs. Minn. Stat. Minn. Stat. § 216B.6851, subd. 6(b) states:

The Public Utilities Commission shall review and evaluate a utility’s mercury emissions reduction plans submitted under this section. In its review, the commission shall consider the environmental and public health benefits, the agency’s determination of technical feasibility, competitiveness of customer rates, and cost-effectiveness of the utility’s proposed mercury control initiatives in light of the Pollution Control Agency’s

review under paragraph (a). Within 180 days of receiving the agency's report, the commission shall approve a utility's mercury emissions-reduction plan that the commission reasonably expects will come closest to achieving total mercury reductions at targeted and supplemental units owned by the utility equivalent to a goal of 90 percent reduction of mercury emissions at the utility's targeted units by December 31, 2018, in a manner that provides for increased environmental and public health benefits without imposing excessive costs on the utility's customers.

This process began on August 31, 2012, when Minnesota Power submitted its Plan to the Commission nearly three years before required to do so under Minn. Stat. § 216B.6851, subd. 5(a). On March 1, 2013, the MPCA issued its report recommending that the Commission approve the Project. The MPCA concluded:

This project meets the requirements of Minn. Stat. § 216B.6851, addressing Minnesota Power's plan for controlling mercury emissions. This project will result in some reductions in sulfur dioxide (SO₂) and particulate matter (PM) and mercury will potentially be reduced by greater than 90 percent from Boswell Unit 4.

In reviewing the Plan, the Commission must consider the MPCA's assessment, environmental and public health benefits, competitiveness of customer rates, and cost-effectiveness. The Legislature did not provide in MERA any further environmental review or other consideration that must be taken into account by the Commission in evaluating the Plan to reduce mercury emissions at BEC4.

MP stated that the purpose of MEPA is information gathering, and granting the EAW Petition will not facilitate the Commission's review of the Plan. The Commission is currently reviewing all of Minnesota Power's generating resources as part of the 2013 IRP, including BEC4. The analysis built into the 2013 IRP for BEC4 is the same as that applied to the Plan Petition. Moreover, the Commission already has significant authority to consider environmental costs and externalities under the IRP statute.

MP noted that an EAW has never been part of the record necessary to review other emission reduction projects or resource plans submitted by Minnesota Power or other Minnesota utilities. MP argued that the same reasoning and analysis is applicable to other emission reduction projects and should apply in this case.

MP argue that the EAW Petition mischaracterizes the Project as an effort to "extend the life" of BEC4. It noted that only the Commission has the authority to extend the life of BEC4 or any Minnesota Power regulated asset, and only upon petition by the Company. There is no such request in this Docket. The EAW Petition fails to include material evidence that the Project may have the potential for significant environmental effects. The Retrofit is actually an environmentally beneficial project that will reduce emissions from the unit, including SO₂ by almost 40 percent, PM by 80 percent, and mercury by approximately 90 percent. Moreover, given the substantial information already developed regarding the Project, an EAW would not provide any data useful in informing the Commission's decision regarding the proposed BEC4 Retrofit.

For example, while an EAW is project-specific, the EPA's own analysis under the MATS Rule was properly based on compliance criteria and not facility shutdowns. Application of the criteria that the MPUC must use to determine whether a project may have the potential for significant environmental effects establishes that there is no such potential here, and that an EAW is unnecessary even if the Commission was not evaluating the Project under MERA.

Ratepayer Harm

MP argued that if the Commission grants an EAW Petition, there may be a significant delay in starting construction on the Project, which will increase Project costs and which will negatively affect ratepayers. The MPCA's guidance document indicated the expected timeframe for an EAW as six months.

Because of the integrated nature of the Project, upfront time is needed for conceptual engineering, final design, procurement and construction. Similarly, Minnesota Power made the effort to schedule the required outage(s) at the optimal time for customers in order to minimize replacement energy costs and associated operation and maintenance costs for ratepayers.

Final tie-in of the entire BEC4 Project will occur during a single scheduled maintenance outage. Minnesota Power originally planned to begin onsite construction for the Project in spring 2013, with in-service expected by year-end 2015. Given this original construction schedule, ordering an EAW will likely delay the start of construction until spring 2014.

If an EAW is ordered, Minnesota Power would have two options: (1) maintain the original in-service schedule of year-end 2015, or (2) adjust the schedule so that the Project is in-service by spring of 2016.

Minnesota Power does not know at this time the magnitude of such a delay, except that either scenario will result in elevating corresponding risk factors and will almost certainly result in additional costs to ratepayers. To maintain a year-end 2015 in-service schedule would necessitate substantial overtime costs, additional equipment and winter construction. In addition, given the current MATS Rule deadlines for compliance, Minnesota Power would have little time for tuning and testing the Project. This could add the potential for unplanned outages at BEC4, resulting in higher replacement energy and capacity costs.

MP stated that ratepayers would receive fewer environmental benefits from a delayed in-service date because the Project's emission reductions would happen months later, contrary to the intent of MERA to maximize mercury emission reductions.

There is also a concern that schedule delay will have reliability impacts from both a Midcontinent Independent System Operator, Inc. ("MISO") standpoint. A BEC4 outage request has been submitted to MISO for the period from October 3, 2015 through November 29, 2015. MISO generation owners must submit their planned maintenance outage schedules for coal-fired facilities 10 MW and above to MISO at least two years prior to the start of the outage. Minnesota Power's outage request was submitted in compliance with this criterion. If an EAW is ordered, the outage timing from MISO would need to be adjusted.

MP noted that it has a phased strategy for purchasing replacement energy associated with scheduled generator outages. A schedule change will add complexity and risk to how Minnesota Power would be able to implement this strategy and could be detrimental to ratepayers.

MP stated that in addition to its statutory role under MERA, the Commission is in the best position to assess whether the costs to ratepayers of obtaining additional information on this Project will aid the Commission in making future decisions related to the Project, BEC4 and Minnesota Power's rates and service. The MPCA has already provided a report on the Project's environmental aspects. The Department has already provided its economic analysis of the Project and recommends approval of the cost recovery aspects of the Project.

Remaining Life

MP stated that since BEC4 was originally placed in service in 1980, the Commission and the Department of Commerce have reviewed BEC4 in numerous dockets, including approving the sale of 20 percent of the Unit to WPPI Energy in 1990, recovery in base rates for upgrades to NOx controls in 2010, and reviewing this resource in every Minnesota Power integrated resource plan.

MP noted that in its evaluation of the Baseload Diversification Study the Department's evaluation removed the retirement option for BEC4 since "initial Department analysis determined that, at the expected level of environmental compliance costs, retiring Boswell 4 is not a cost-effective option." MP stated that the Department's May 14, 2013, Comments in this Docket reinforced the conclusions in the Baseload Study. In those comments, the Department concluded that even with the environmental upgrades, BEC4 is a least cost resource in MP's generation fleet. The Department added that since the proposed BEC4 project is a cost effective way to achieve various emission reductions, MP's proposed BEC4 project should be approved.

MP noted that in its 2012 Remaining Life Depreciation Petition filed with the MPUC on April 16, 2012, Minnesota Power indicated that the remaining useful life of BEC4 is 24 years beginning as of 2012. The Project is not expected to increase the useful life of the Unit. In 2010, the Commission approved a seven year extension of the useful life of BEC4 as part of the 2010 Remaining Life Depreciation docket based on significant work done in 2010 to the BEC4 boiler, turbine/generator, and the balance of the plant that provided ratepayers production efficiency with no additional coal use.

Compliance with the Clean Air Act and the Mercury Emissions Reduction Act

Minnesota Power stated that it is implementing a pollution control retrofit project on BEC4, including installation of a circulating dry scrubber, a fabric filter, and a powder activated carbon injection system. The primary purpose of the Project is to meet the requirements of the MERA and the federal MATS Rule promulgated under the Clean Air Act. In addition, the Project is expected to help BEC4 comply with other promulgated or proposed federal and state environmental rules.

EPA published the final MATS Rule, on February 16, 2012. The MATS Rule addresses emissions from coal-fired utility units with an electric generation capacity greater than 25

megawatts. Affected sources must comply with the Rule by April 2015 unless they receive a one-year extension, which states have the authority to grant on a case-by-case basis. By letter dated January 28, 2013, MPCA granted BEC4 a one-year extension for MATS Rule compliance. Minnesota Power must demonstrate that BEC4 complies with MATS Rule by April 2016, or upon completion of the Project (including equipment tuning), whichever occurs first.

Project Procedural History

MP stated that the Project has already received the following environmental approvals:

MPCA granted BEC4 a one-year extension for MATS Rule compliance by a letter dated January 28, 2013.

Army Corps of Engineers Permit No. 2012-00078-WAB, granted February 25, 2013 (Clean Water Act Section 404 permit);

Minnesota Wetland Conservation Act Notice of Decision dated November 15, 2012 and signed by the Itasca County Soil & Water Conservation District as the Local Government Unit under the Wetland Conservation Act, (Notice of Decision);

Notice of Withdrawal of Wetland Credits From The Minnesota Wetlands Bank issued by the Minnesota Board of Water & Soil Resources dated February 25, 2013 (Withdrawal of Banking Credits); and

Minnesota Department of Natural Resources Public Waters Work Permit, granted January 7, 2013.

MP stated that the Project is not expected to increase water use at the facility, so no change to the water appropriations permit issued by the Minnesota Department of Natural Resources is necessary. In addition, the Project will not change BEC4's wastewater discharges, so no change to the National Pollution Discharge Elimination System ("NPDES") permit issued by MPCA under the Clean Water Act is necessary.

Finally, MPCA has issued a draft amended Title V air permit for BEC4 so that Minnesota Power and WPPI Energy may implement the Project. Only MCEA commented on the draft air permit. But for the EAW Petition, the final air permit would have been issued in early May 2013, and initial construction on BEC4 would have already begun to meet the planned construction and outage timing.

Conclusion

Minnesota Power requested that the Commission deny the EAW Petition. It stated that MERA clearly established when and how Commission review of the BEC4 Project is to occur and an EAW will not aid in that review. An EAW, which is unnecessary, will impose construction schedule delays resulting in additional costs and risks for Minnesota Power's ratepayers.

Iron Range Legislative Delegation of the Minnesota House of Representatives

The Iron Range Legislative Delegation requested that the Commission deny the petition for an EAW on the Minnesota Power proposed Boswell 4 environmental retrofit project. They noted that the environmental aspects of the Boswell 4 compliance project have been analyzed by the MPCA according to statutory requirements and reported to the Commission for its decision making in this Docket. An EAW is not required, it would delay important emission reductions and it would drive up Boswell 4 project costs, negatively affecting Minnesota Power's customers.

They noted that the Boswell Energy Center is a major economic driver of the region's economy. Boswell 4, the largest and newest unit at the facility, provides vital and economic 24/7 base load power to industries, business and residents in Northeastern Minnesota. In 2012, Boswell Energy Center injected approximately \$18.5 million into the communities from employee wages. The annual tax payments from Boswell to local governments in 2012 were \$5.6 million. The competitive energy from Boswell 4 helps to support the jobs of thousands of people employed by mines, paper mills and other industries in Northeastern Minnesota.

They noted that the three year \$400 million Boswell 4 environmental compliance project will boost the regional economy as a major construction project. It will result in several hundred construction jobs employing a variety of trades people over a several year period, reaching a peak of over 500 jobs as the project is built.

The IRLD noted that:

The legislature authorized the Boswell 4 mercury reduction project in 2006.

Minnesota Power has received the necessary state and federal land and water permits for the project.

The Minnesota Pollution Control Agency has recommended the project for implementation and drafted the air permit.

The EAW petition is holding up air permit approval.

The IRLD noted that Minnesota Power completed major environmental retrofits at Boswell 3, Laskin Energy Center and Taconite Harbor Energy Center with PUC approval and those projects did not require an EAW. Procedures and processes for environmental compliance retrofits are well established and an EAW is not needed on the Boswell 4 project.

The IRLD requested that the Commission deny the EAW petition on the Boswell 4 project.

Minnesota Chamber of Commerce

The Minnesota Chamber of Commerce requested that the Commission deny the MCEA's Petition requesting an EAW. The MCC argued that an EAW is unnecessary and not required to reach a decision on the project. An EAW would only delay project implementation resulting in increased costs to ratepayers while postponing beneficial emission reductions. The MCC argued

that inserting an EAW into a retrofit approval docket at the Commission is unprecedented, unwarranted and will only delay emission reductions and increase project costs without justification. Ratepayers will subsequently be required to pay for the costly delays.

The MCC stated that the MERA specifies the environmental impact analysis that is required for implementation of projects proposed to the Commission. The MPCA regulates and reviews proposed environmental retrofit compliance projects and reports MERA issues to the Commission. The MPCA thoroughly analyzed the project and recommended the Commission approve it in a report dated March 1, 2013.

The MCC stated that precedent demonstrates an EAW is clearly inappropriate and will not provide the Commission with information necessary to decide on the prudence of the project. It noted that previous retrofits done under MERA for Minnesota Power and Xcel Energy did not require an EAW. Without an EAW, Minnesota Power received Commission approval and successfully completed environmental compliance projects on Laskin Energy Center, Taconite Harbor Energy Center, and Boswell Unit 3 resulting in thousands of tons of emission reduction.

The Chamber argued that an EAW will only delay a timely, cost-effective, and environmentally beneficial retrofit to Boswell 4. The delay posed by an EAW threatens to add significant costs to the Boswell 4 project and Minnesota Power's ability to meet the April 2016 Environmental Protection Agency deadline for construction completion.

Overwhelming support from stakeholders and the support of the MPCA demonstrate the project is in the best interests of ratepayers and the state of Minnesota. The Chamber urged the Commission to deny the request for an EAW and to proceed with a timely review of the Boswell 4 environmental compliance project.

Large Power Intervenors

The Large Power Intervenors is comprised of the following companies: ArcelorMittal USA (Minorca Mine); Boise, Inc.; Enbridge Energy, Limited Partnership; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; NewPage Corporation; PolyMet Mining, Inc.; Sappi Cloquet, LLC; UPM – Blandin Paper Company; USG Interiors, LLC; United States Steel Corporation (Keewatin Taconite and Minntac Mine); and United Taconite, LLC.

Analysis

Existing Environmental Review

The LPI quoted MERA, Minn. Stat. § 216B.6851, subd. 6(b) and its directions to the Commission to review and evaluate a utility's mercury emissions-reduction plans submitted under that section.

The LPI stated that the MPCA issued its report on the Project on March 1, 2013, concluding that the Project is "appropriate for accomplishing the objectives of reducing emissions of mercury and other pollutants under Minn. Stat. §§ 216B.68 to 216B.688" and "bringing the Boswell Unit 4 into compliance with federal air emission standards." The LPI stated that while MERA

specifically requires the agency and Commission to assess the environmental and public health benefits of the Project, the legislature did not provide for further or additional environmental review. In similar recent proceedings, the Commission has reviewed and approved mercury reduction projects without additional environmental review beyond that required by the statute.

The Project Is Exempt or the Petition Incomplete

Definition of the Project

The LPI stated that according to Minn. Stat. § 116D.04, subd. 2a(c), an EAW shall be prepared for a proposed action whenever material evidence accompanying a petition of not less than 100 individuals “demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects.” The LPI stated that in order to reach the questions of whether such evidence has been properly provided, the project and corresponding government action must be clearly defined.

The EQB rules, Minn. Rules, 4410.0200, subp. 65, define a project as “a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly.” A governmental action includes the governmental approval process for a project that would have such impact. Citing *Minnesotans for Responsible Recreation v. Dep’t of Natural Res.*, 651 N.W.2d 533, 540 (Minn. Ct. App. 2002), the LPI stated the Project, for the purposes of environmental review, must be “a definite, site-specific, action that contemplates on-the-ground environmental changes, including changes in the nature of the use.”

Minnesota Power petitioned the Commission for approval (government action) of its plans to install the pollution reduction equipment (Project) that is required by state and federal law at BEC4. The LPI stated that the EAW Petition conflates the BEC4 Emissions Reduction Project review process with one that reconsiders the entire BEC4 facility or purports to “extend the life of BEC4.” This mischaracterization is important for two reasons.

First, the current docket is focused on the adequacy of Minnesota Power’s plans to install pollution equipment for compliance with state and federal law. It is not a resource planning docket. The LPI argued that resource decisions, including specifically whether to retire or retrofit coal units such as BEC4, are made as part of the resource planning process, and the Commission has authority to consider environmental costs and externalities as part of that process.

It noted that at the conclusion of Minnesota Power’s last resource planning process, the Commission required Minnesota Power to conduct a baseload diversification study. The baseload diversification study was focused on its coal-fired generation. The results of that study contained a preliminary analysis that revealed some units on Minnesota Power’s system may be uneconomical to retrofit, but being the newest and largest on Minnesota Power’s system, BEC4 was not among them. The Commission approved Minnesota Power’s baseload diversification study and closed the 2010 Integrated Resource Planning process on September 13, 2012.

The LPI noted that the EAW Petitioners are active in Minnesota Power's 2013 Resource Plan submitted its 2013 Integrated Resource Plan ("Resource Plan") to the Commission in March 2013

The LPI noted that the Commission has approved the remaining "life" of BEC4 as part of the 2010 Remaining Life Depreciation docket. Therefore, the operating life of BEC4 has been addressed in separate proceedings and extension of BEC4's lifespan is not the project currently being proposed by Minnesota Power. In order to avoid duplication or conflicting outcomes, it is important that this docket remain focused on pollution control decisions and not duplicate resource planning or depreciation decisions that have either already been made or are regularly made as part of other established processes.

Second, the EQB rules provide standard exemptions for projects that have already undergone environmental review or for which no government approvals are pending. The construction of a new large energy facility would require mandatory environmental review, but BEC4 has been in service since 1980. In this proceeding, Minnesota Power is not proposing any expansion of BEC4 or, as discussed above, any extension of its operating life. The proposal is instead limited to installation of new pollution control equipment. Since there are no government approvals pending with respect to expanding or extending operations of BEC4, it is exempt from further environmental review under the EQB rules.

The IPL argued that the "project" at issue for which a discretionary EAW could be considered is installation of the pollution control equipment at BEC4. The EAW Petition fails to demonstrate that the Project will have the potential for significant environmental effects. To the contrary, the substantial environmental benefits of the Project have been closely studied, documented, and deemed appropriate by the MPCA. The Minnesota Department of Commerce – Division of Energy Resources reviewed the MPCA's analysis of the Project and the Project itself and determined that the Project is a cost-effective way to achieve various emissions reductions and recommended approval.

An EAW would be duplicative of state agencies' completed review and would potentially delay achieving the substantial environmental benefits identified in that review.

Incomplete Petition

The LPI stated that the EAW Petition should be denied because it does not contain any evidence that the Project has the potential for significant environmental effects. MCEA's request for an EAW may only be granted if it is accompanied by "material evidence" demonstrating that the BEC4 Emissions Reduction Project has the potential for significant environmental effects. Minn. Rule 4410.1100, subp. 6 requires that the evidence must be specific to the project for which environmental review is being considered and demonstrate that "because of the nature or location of the proposed project, the project may have the potential for significant environmental effects." Without such material evidence specific to the project in question, the Commission must deny the petition.

Instead of supplying data corresponding with the Project, Petitioners cite generalized impacts from the whole BEC4 generating facility, Minnesota Power's system, and the U.S. coal power

generation fleet in general. The data provided do not supply particularized evidence of how the Project may have the potential to significantly impact the environment. The data specific the Project demonstrates pollution reductions, including, but not limited to, a nearly 40 percent reduction in SO₂, an 80 percent reduction in PM, and a mercury reduction of approximately 90 percent.

The LPI argued that without specific evidence related to the project in question, Petitioners' claims are vague and generalized assertions and insufficient to constitute "material evidence" under the statute.

Increased Cost

LPI comments contained extensive comments regarding the cost of the Project, and the potential for increased costs resulting from a delay associated with an EAW. The LPI indicated that it acknowledges the benefits of the BEC4 Emissions Reduction Project, but remains concerned about the potential cost.

The LPI stated that any costs in excess of the Project budget will place continued stress on ratepayers already subject to dramatic rate increases. According to Minnesota Power, the average rate for the large power class in 2005 was \$38.46/MWh. The Resource Plan notes the 2013 average rate for the large power class is roughly \$54.75/MWh. If Minnesota Power's preferred plan is adopted, the average rate for the large power class will be approximately \$65.65/MWh by 2017. This represents an increase of 70.7% over a 12-year period.

The LPI stated The MCEA's attempt to foist an unwarranted and unnecessary EAW process on the BEC4 Emissions Reduction Project will delay the schedule and further increase Minnesota Power's skyrocketing rates.

The LPI noted that a delay caused by the EAW process would delay achievement of the environmental goals of the Project.

LPI stated that it is also concerned with the precedent that would be set by ordering an EAW for a pollution control project. The EAW Petition is concerned with on-going operation of BCE4 rather than any particular aspect of the pollution control equipment installation. As noted above, resource planning is addressed extensively in other Commission proceedings, including Minnesota Power's Resource Plan. Concerns regarding Minnesota Power's resource mix are appropriately directed to those proceedings. Addressing such concerns via an EAW for a pollution control project is out of context and will unnecessarily increase the cost of compliance with environmental laws. Ultimately, Minnesota Power customers will bear the burden of such inefficiency – through higher rates and delayed emissions reductions.

Conclusion

LPI stated that it hopes the Commission will recognize the competitive pressures facing the large power class and deny the EAW Petition that would only provide an avenue to delay emissions reductions required by law and unnecessarily increase costs.

WPPI Energy

WPPI Energy is a municipal electric company formed pursuant to Wisconsin Statutes §66.0825 and co-owner of Boswell Energy Center Unit 4. WPPI believes that the Petition should be denied and no EAW should be required by the Commission with respect to the Project. WPPI stated that it supports the comments made by Minnesota Power in this Docket and submitted comments to, among other things, provide the Commission with additional information regarding the review and approval process undertaken by the Public Service Commission of Wisconsin (the “PSCW”) in connection with the Project.

WPPI Energy

WPPI is a municipal electric utility that supplies substantially all of the wholesale electric power requirements of its member distribution systems on a not-for-profit basis. WPPI’s members consist of 51 municipalities, municipal utilities and a cooperative electric association within Wisconsin, Iowa and Michigan. These members serve a total of approximately 195,000 customers. WPPI established a peak system demand of 1,048 MW on July 17, 2012.

WPP has a 20 percent co-ownership (about 117 MW) of BEC4, which currently provides 18 percent of WPPI’s member baseload energy needs. BEC4 has been the anchor baseload resource in WPPI’s power supply portfolio since the PSCW approved WPPI’s ownership interest in 1990. BEC4 will remain WPPI’s lowest cost resource even after completion of the Project. Without BEC4, WPPI would have to fill an immediate baseload need of 117 MW to maintain a balanced portfolio.

WPPI stated that it is critical to WPPI that all approvals and permits be received in a timely manner so that the Project may be completed prior to the federal Mercury and Air Toxics Standards rule April 2016 compliance deadline.

Approval by the Public Service Commission of Wisconsin

To participate in the Project, WPPI was required to obtain a Certificate of Authority (“CA”) from the PSCW. WPPI submitted an application for a CA to the PSCW on October 11, 2012. No individuals or organizations intervened in the CA proceeding. In its Final Decision dated February 11, 2013 (the “Final Decision”, Exhibit 1 to WPPI’s comments), the PSCW granted a CA to WPPI for the Project. In the Final Decision, the PSCW concluded that “no other reasonable alternatives to the proposed project exist that could provide adequate support in a more reliable, timely, cost-effective, and environmentally acceptable manner.”

In connection with the review of a CA application, the PSCW is required to consider the environmental ramifications of a proposed project. Depending on the likelihood and severity of a resulting effect on the quality of the human environment, an environmental impact statement or environmental assessment (“EA”) may be required. Similar to an EAW, an EA is a “concise document that provides a factual investigation of the relevant areas of environmental concern in sufficient depth to permit a reasonably informed preliminary judgment of the environmental consequences of the proposed action”. An EA must include a recommendation whether the proposed action is a major action for which an EIS is required.

WPPI stated that PSCW actions are categorized by type depending on the potential resulting environmental effect:

Type I actions are proposed major actions that significantly affect the quality of the human environment and for which an EIS must be prepared.

Type II actions are proposed actions that have the potential to significantly affect the quality of the human environment, and for which an EA must usually be prepared.

Type III actions are proposed actions that normally do not have the potential to significantly affect the quality of the human environment and do not normally require preparation of an EA or EIS.

The PSCW determined that the Project was a Type III action for which neither an EIS nor an EA was required. WPPI stated that the PSCW reasoned that “[a]s an emissions control project designed to bring BEC4 into compliance with regulations that are intended to improve the quality of the human environment, the proposed project is expected to have a positive environmental effect.”

Denial of Petition

WPPI stated that the Project will allow BEC4 to comply with stringent state and federal emissions control regulations including the Minnesota Mercury Emissions Reduction Act and MATS Rule. The MATS Rule compliance deadline applicable to BEC4 is in April of 2016. As such, the Project will result in significantly reduced emissions from BEC4. The environmental effects of the Project have been extensively reviewed by the Minnesota Pollution Control Agency in connection with its recommendation that the Commission ultimately approve the Project, and in the amended air permit process, in which MPCA stated that the Project does not trigger additional environmental review.

MCEA Representation of Operational Plans for BEC4

Life Extension of Project

WPPI disagreed with MCEA’s representation that the Project is “an effort to extend the life of BEC4”. It stated that the MCEA’s argument is predicated on an erroneous assumption that operation after the MATS Rule deadline amounts to an extension of BEC4’s useful life, in an attempt to change the focus from the actual Project to a much broader consideration of BEC4 itself. MCEA ignores the fact that the Commission has already considered and approved the ongoing operation of BEC4 through numerous proceedings, including regular proceedings relating to Minnesota Power’s integrated resource plans. As required under Wisconsin law, the PSCW also considered alternatives to BEC4 in connection with WPPI’s CA application. All of the Petitioners either have participated or have had the opportunity to participate in the prior Commission and PSCW proceedings relating to BEC4, all of which are final and non-appealable.

Misapplication of MEPA

WPPI argued that Petitioners' attempt to broaden the scope of the "project" at issue is directly in conflict with MEPA. Under MEPA, a "project" subject to review is "a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly." Importantly, the determination of whether a particular project requires an EAW or other environmental analysis documents "shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project." In other words, the consequence of a Commission decision regarding the Project (or a MPCA decision regarding the amended air permit) is not an appropriate basis for imposing MEPA review. Contrary to such language, the Petition focuses entirely on the consequences of the governmental approval process with respect to the Project (i.e., approval allows continued operation of BEC4), and not on the physical activity undertaken – the Project itself (i.e., the proposed environmental retrofit will result in significantly reduced pollutant emissions).

WPPI claimed that ignoring the plain language meaning of Minnesota law in favor of the process-driven, expansive interpretation of MEPA's requirements sought by Petitioners would result in dramatic results. Were MEPA tied to the governmental process of approving a project as the Petitioners suggest, all responsible governmental units (each an "RGU") would face a burdensome, unnecessary process requiring expansive and duplicative environmental review each time RGU approval is necessary for continued operation of all projects of any type, including all RGU actions related to existing projects which had previously been subject to review and approval.

Intent of the MATS Rule

WPPI stated that MATS Rule expressly provides for continued operation after 2015 (extended to 2016 for BEC4) of generating units that comply with the rules. WPPI argued that if the Petitioners desired regulations that would not allow operation of units such as BEC4 following the MATS Rule deadlines, the proper venue for action was that rulemaking process, not these proceedings. The final MATS Rule remains under review in federal court. The Izaak Walton League of America and Sierra Club intervened in the proceedings, supporting MATS rules, noting that in promulgating the rules, "EPA has fully reexamined the risk assessments regarding mercury and non-mercury pollutants, considered the impacts of all federally-enforceable regulations, and reviewed alternative control strategies."

EAW Thresholds

WPPI argued that review of the Project is not mandatory under MEPA and no discretionary review is warranted. MEPA provides several categories that require a mandatory EAW. The Project does not qualify under any of these mandatory categories. Under the most conservative approach to MEPA, the only possible category under which the Project would qualify would be under an increase in air pollution. This rule requires an EAW be prepared when a project will increase air pollutants by 250 tons per year. The Project is intended to reduce air emissions, and would, therefore, not qualify for a mandatory EAW under MEPA. An EAW for the Project is not mandatory.

WPPI argued that discretionary review is also inappropriate here. MEPA allows for an RGU to require a discretionary EAW for a project if the project does not qualify for one of the outlined exemptions. A discretionary EAW may be prepared when an RGU “with approval authority over a proposed project determines pursuant to the petition process . . . that, the project may have the potential for significant environmental effects.” No EAW is warranted here because the Project is proposed to decrease emissions and overall environmental effects of BEC4 and therefore does not have the “potential for significant environmental effects.”

Conclusion

WPPI stated that the Commission’s review in this Docket should focus solely on the Project rather than the broader scope of review erroneously urged by Petitioners. The Project has already been extensively vetted by MPCA with respect to environmental issues and will not result in adverse environmental effects. Additional review sought by the Petitioners will provide the Commission with no new useful analysis or information. The Commission review should continue to follow past practice, which provides for considerable and sufficient review of the Project and its environmental impacts, and is consistent with the level of review followed by Wisconsin regulators.

Granting the Petitioner’s request will only delay development of the Project, create considerable delay-related cost and risk for Minnesota Power, WPPI and their energy customers in Minnesota, Wisconsin, Iowa and Michigan, and set poor precedent regarding burdensome and unnecessarily duplicative review for future projects.

WPPI requested that the Petition be denied pursuant to the discretion afforded to the Commission under Minnesota law.

MCEA Reply Comments

The MCEA stated that the legal question before the Commission is whether the Petition demonstrates that "there may be potential for significant environmental effects" from Minnesota Power's proposed project for the Boswell Energy Center, unit 4 ("BEC4").

Some parties have cited the Minnesota Environmental Quality Board Rule establishing factors an agency considers when deciding whether there is potential for significant environmental effect, in which case an Environmental Impact Statement is required. MCEA argued that it is important that the Commission recognize the lower standard that applies to a petition for an EAW. The Minnesota Court of Appeals has approved consideration of the EQB Rule factors, but has also clearly stated that "the criteria for preparation of an EAW ("may have the potential for significant environmental effects") is lower than the criteria for preparation of an EIS."

MCEA noted that all commenters appeared to agree that an EAW is neither mandatory nor exempt. An EAW is therefore “discretionary”. The MCEA claimed that if the Commission finds that the project may have the potential for significant environmental effects, it must order an EAW.

Issue Before the Commission

MCEA stated that most of the comments received in response to the Commission's notice do not address the narrow legal issue before the Commission. MCEA argued that a general comment period on the need for an EAW in response to a petition is not contemplated by the Minnesota Environmental Policy Act or the EQB rules, and the Commission should limit its consideration to those issues related to the question presented by the Citizen Petition: Whether there is material evidence showing that Minnesota Power's proposed project may have the potential for significant environmental effects.

MCEA stated that an agency may not rely on factors not intended by the legislature. The Commission cannot, therefore, give weight to comments that do not address whether there is material evidence that the project may have the potential for significant environmental impacts.

Project

Noting that several commenters took issue with Petitioners' description of the project as a "life-extension project", MCEA stated that the name of the project is irrelevant to the Commission's decision. The relevant issue for purposes of environmental review is that Minnesota Power has proposed a project that requires governmental approval and that may have the potential for significant environmental effects.

Precedent

MCEA noted that the MPCA appears to be concerned that requiring an EAW in this case would set a troubling precedent for all projects undertaken to comply with new regulations. MCEA claimed that the MPCA's concerns are not well founded for several reasons.

The MERA Requires an Environmental Evaluation

Minnesota Power's application was filed under the "utility option" section of MERA. The statute requires the company to submit multiple plans, a proposed plan as well as alternatives. It further requires that all of those plans be evaluated by the MPCA and the Commission. That evaluation is supposed to include environmental and human health impacts of the plan and alternatives. There has not yet been any evaluation of the alternatives.

The MERA does not say that the MPCA shall review the utility's preferred plan only. Yet, the MPCA's review includes no evaluation of any alternative plan submitted pursuant to Minn. Stat. § 216B.6851, subd. 4. The only reference to an alternative plan in the MPCA review is in a footnote: "Minnesota Power described in the filing exhibits alternatives to mercury controls that included replacing the entire unit with natural gas-fired generation. The PUC has determined that Boswell 4 is XXXX [sic]." MCEA claimed that the Commission cannot, on the existing record, approve Minnesota Power's application because there is no "evaluation of the environmental and public health benefits of each option proposed or considered by the utility" as required by the statute.

MCEA claimed that its Petition for an EAW in this matter appropriately asks the Commission to build a record of the environmental impacts of the project and alternatives. This is a requirement of MERA that has not yet been completed. The Petitioners' request arises in a unique situation where a separate statute obliges the government to study environmental and human health impacts but it has not yet done so. Granting the Petition under these circumstances does not set a broadly applicable precedent.

The Proposal is Unique and Larger than Necessary

The MCEA claimed that Minnesota Power's Project includes investments that go well beyond what is required for compliance with MERA and MATS. MP has proposed an expensive multi-pollutant control retrofit, a major investment that will have the effect of locking in an existing, polluting resource for many years to come. This is not a typical response to regulatory compliance and, thus, this case is very distinguishable from most projects undertaken to comply with new regulations.

Petition for EAWs are Fact-Specific

The MCEA claimed that MPCA's suggestion that a precedent applicable to other projects could result from the Commission's granting the Petition is both incorrect and irrelevant. EAW petition decisions are based solely on the factual record before the agency and the applicable legal standard, which is whether that record shows a project may have the potential for significant environmental effects. Each project and each record has to be evaluated individually. Whether the Commission grants an EAW petition for this unique project should have no bearing on whether environmental review is required in future cases. If evidence shows that such future projects may have the potential for significant environmental effects, then environmental review is required by the statute. MCEA argued that the Legislature did not direct this Commission to weigh a hypothetical concern for setting a precedent in its decision on an EAW petition, and such consideration is inappropriate.

Determination of Potential for Environmental Impacts

MCEA claimed that in order to evaluate whether the proposed project may have the potential for significant environmental effects, the Commission must establish a baseline to which to compare the project. To satisfy Minnesota's environmental review law, that baseline has to be reasonable and based on known facts. The MPCA's suggestion that current environmental impacts from BEC4 be established as the baseline is not reasonable. It would require the Commission to pretend to be blind to the very facts underlying the purpose of Minnesota Power's project.

MCEA claimed the evidence and facts are clear that BEC4 cannot operate as currently configured beyond 2016. Minnesota Power says it has proposed the \$350 million project "to meet the requirements of the MMERA and the federal Mercury and Air Toxics Standards Rule ("MATS") promulgated under the Clean Air Act." Thus, according to Minnesota Power's own position, it cannot continue to operate the plant as designed beyond the date of MERA and MATS compliance. According to Minnesota Power's own application, compliance requires either idling the plant, proposing a cleaner fuel alternative, or implementing the proposed \$350 million retrofit.

MCEA argued that based on the known facts, the Commission cannot adopt a magical scenario in which BEC4 continues to operate as is. The Commission must compare the environmental effects of the project if it goes forward as proposed to a baseline of effects if the project does not proceed. In other words, the Commission must ask, "but for" the proposed project, what environmental effects will result? In federal environmental review cases, this is often referred to as the "no action" or the "no build" scenario, i.e., the baseline to which the project is compared. "Without [accurate baseline] data, an agency cannot carefully consider information about significant environment impacts ... resulting in an arbitrary and capricious decision." (*N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 617 F.3d 596, 603 (4th Cir. 2012) (quoting *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011))).

The Petitioners provided two alternative baselines for the Commission's consideration - one which assumes no action is taken and the plant must go idle, a second which assumes that Minnesota Power replaces BEC4 with a natural gas plant. Minnesota Power derides these baselines as "mere artifice" but fails to acknowledge that they are based on the alternatives the company itself identified in its application. Because the existing evidence and known facts demonstrate that BEC4 cannot continue to operate as currently designed, these are the only reasonable baseline scenarios on which the proposed project can be evaluated.

Project Delay

MCEA argued that the Commission should not be swayed by Minnesota Power's assertion that its project will be delayed if an EAW is required.

First the company is responsible for the insufficient record currently before the Commission. MERA's mandate that the utility provide alternative plans and that those plans, including their environmental impacts, be evaluated is clear. Minnesota Power knew or should have known that the record before the Commission is insufficient to proceed.

Second, the time needed to complete an EAW is exaggerated. An EAW is "a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action."

Third, making a final decision on the project now: before a full record is developed, will only lead to more delay since the decision will be vulnerable to reversal in a judicial- proceeding.

The MCEA stated that the Commission must apply the law to the facts and order an EAW. The state's environmental review law requires the Commission to order an EAW if evidence shows that the proposed project may have the potential for significant environmental effects. Investing \$350 million in a coal plant that would otherwise have to be idled or replaced with leaner alternatives obviously has significant environmental consequences.

The MCEA stated that this is an easy case because MERA requires an evaluation of the environmental and human health impacts of the proposal and alternatives. That evaluation has not been done. Because the existing record has no environmental and human health analysis of the project and alternatives, the Commission should grant the Citizen Petition.

Staff Comments

Staff thinks the DOC EFP has provided a clear analysis that focused on the specifics of the Proposal and the requirement under Minnesota Statutes and Rules. As discussed by the DOC EFP, MEPA requires an assessment of the potential environmental impacts of proposed governmental actions, as an aid to the decision-making process for such actions. According to Minn. Stat. § 116D.04, a governmental action means:

[A]ctivities, including projects wholly or partially conducted, permitted, assisted, financed, regulated or approved by units of government, including the federal government.

It defines an environmental assessment worksheet as:

[A] brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.

Minn. Rules Chapter 4410, have been adopted to implement the environmental review requirements of MEPA. It states that the EAW serves primarily to:

- A. aid in the determination of whether an EIS is needed for a proposed project; and
- B. serve as a basis to begin the scoping process for an EIS.

Minn. Rules Chapter 4410 subp. 2 identifies Mandatory EAW Categories, specifically:

An EAW shall be prepared for any project that meets or exceeds the thresholds of any of the EAW categories listed in part 4410.4300 or any of the EIS categories listed in part 4410.4400.

Minn. Rules Chapter 4410.4600 identifies projects that are exempt from an EAW. Minn. Rules Chapter 4410 subp. 3 identifies conditions for Discretionary EAW categories. As noted by the Department, if the proposed governmental action is neither mandatory nor exempt, environmental review is discretionary.

Staff agrees with the DOC EFP that the Commission's decision on MP's proposed retrofit project meets MEPA's statutory definition of a governmental action. Staff also agrees with the DOC EFP, and MPCA that an EAW is not mandatory.

Mandatory EAW

Chapter 4410.4300, Mandatory EAW Categories, subp. 3. Electric generating facilities states:

For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50

megawatts, the EQB shall be the RGU. For electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

As noted by the DOC EFP, the proposed project does not involve the construction of an electric power generating plant of greater than 25 megawatts in capacity (mandatory EAW), greater than 50 MW in capacity (Power Plant Siting Act), or less than 5 MW in capacity (exempt). The proposed project does not involve the construction of an electric power generating plant or proposing to increase the capacity. It is proposing to modify an existing facility.

Min. Rules Chapter 4410.4300, Mandatory EAW Categories, subp. 15. Air Pollution states:

- A. For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item B, after installation of air pollution control equipment, the PCA shall be the RGU.
- B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.

As noted by the DOC EFP, the proposed Project does not entail the construction of a stationary source facility that generates more than 250 tons per year of air pollutants, or a modification of a stationary source that increases the generation of air pollutants by 250 tons per year. Nor does the proposed project entail the construction of a stationary source facility that generates more than 100,000 tons per year of greenhouse gases, or a modification of a stationary source that increases the generation of greenhouse gases by 100,000 tons per year.

MP is not proposing to construct a new facility; they are modifying an existing facility and the modification is not expected to increase the unit's generation of air pollutants or greenhouse gases.

Exempt Projects

Staff also agrees with the DOC EFP that exemption under 4410.4600, Exemptions does not apply because MP is not proposing to construct a facility. Minn. Rules 4410.4600, subp. 3. Electric generating facilities states:

Construction of an electric generating plant or combination of plants at a single site with a combined capacity of less than five megawatts is exempt.

Discretionary EAW

Based on the above, it appears that that an environmental review for MP's proposed retrofit project is discretionary. Minn. Rules 4410.1000, Subp. 3. Discretionary EAWs, explains when an EAW shall be prepared. As summarized by the DOC EFP, when environmental review is discretionary, an EAW is prepared if the governmental unit with approval authority over the proposed project determines "that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects."

Minn. Rules 4410.1100, Petition Process, subp. 6. EAW decision states:

The RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the factors listed in part 4410.1700, subpart 7. The RGU shall maintain, either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW.

Minn. Rules 4410.1700, subp. 7. Criteria, states:

In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

- A. Type, extent, and reversibility of environmental effects;
- B. Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;

- C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

As discussed by the parties, the purpose of the Project is to meet the requirements of MERA and MATS Rule and reduce emissions from the BEC4 unit. MCEA's Petition is based on the argument that the project extends the life of BEC4, thus resulting in more emissions, and other environmental impacts such as water use. MCEA is correct in its assessment that absent the Project, BEC4 would need to be retired. However, claiming that compliance with MERA and MATS Rule requirements is extending the life of a facility suggests that MERA and MATS Rule require utilities to meet some standard other than that stated in the statutes and rules. Such an interpretation is not consistent with the rules or statutes.

Addressing A and B, the environmental effects of the project are well documented in this docket, including discussions within Minnesota Power's proposed project and the Minnesota Pollution Control Agency's Environmental Assessment of the Boswell Unit 4 Environmental Improvement Plan.

Regarding C and D, as noted by the DOC EFP, the BEC4 retrofit project is subject to review and approval pursuant to specific statutory provisions as applied through Docket No. E-015/M-12-920.

An important point is the DOC EFP's statement that contrary to the MCEA's Petition, a discretionary EAW would not include an evaluation of a "no action" alternative or any alternative to the proposed project. As noted above, Minn. Stat. § 116D.04 defines an EAW as a brief document prepared in worksheet format that is designed to rapidly assess the environmental effects that may be associated with a proposed project. The EAW serves primarily to aid in the determination of whether an EIS is needed for a proposed project and as a basis to begin the scoping process for an EIS. A "no action" alternative would be an issue in an EIS.

Resource Plan Proceedings

Some of the comments have accurately noted that the Commission reviews resource decisions within the context of the resource planning process. That process considers environmental costs and externalities and is appropriate for reviewing future electricity supply options and their impacts. On page 2 of its May 6, 2011, Order in MP's last resource plan docket (E-015/RP-09-1088) the Commission explained:

The resource planning statute and rules are detailed and require utilities to file biennial reports on (1) the projected energy needs of their service areas over the next 15 years; (2) their plans for meeting projected need; (3) the analytical process used to develop their plans for meeting projected need; and (4) the reasons for

adopting the specific resource mix proposed to meet projected need. These requirements are designed to ensure that utilities making resource decisions give adequate consideration to factors whose public policy importance has grown in recent years, such as the environmental and socioeconomic effect of different resource mixes.

In its September 13, 2012, Order Accepting Study, Closing Docket, and Establishing Requirements for Next Resource Plan, in Minnesota Power's last resource plan proceeding the Commission noted that the Environmental Organizations requested that, for its next resource plan, Minnesota Power evaluate the appropriate time to retire Boswell Units 1, 2 and 4, as well as Taconite Harbor Units 1 and 2.

The Commission Order required MP to include in its next resource plan, an evaluation of the consequences of retiring Boswell Energy Center, Units 1 and 2 by 2020. It did not require a similar study for BEC4.

Staff notes that while resource plan proceedings are intended to be a comprehensive review where major options should at least be raised, they are not the only place where resource options are reviewed and decisions are made.

Notification of Commission Decision

As discussed in the EQB's May 1, 2013, letter, Minn. Rule 4410.1100 allows up to 30 working days for the decision to be made it will be made by a council, board, or other body which meets only periodically. The Minn. Rule 4410.1100 subp. 8. Notice of decision requires that:

Within five days of its decision the RGU shall notify, in writing, the proposer, the EQB staff, and the petitioner's representative of its decision.

To meet this timeline, the Commission may want to delegate to the Executive Secretary the authority to provide a letter to parties notifying them of the Commission's decision. A Commission order fully discussing the Commission's decision and findings of fact could follow.

Commission Options

Some Commission options are:

- A. Determine that an EAW is mandatory.
- B. Determine that the Project is exempt from an EAW.
- C. Find that the an EAW is discretionary and:
 1. The Petition has not demonstrated that the Project may have the potential for significant environmental effects and deny the Petition.

2. Determine that the Petition has demonstrated that the Project may have the potential for significant environmental effects, that an EAW would assist in the analysis of the project, and require the preparation of an EAW.

Regardless of the Commission's decision above, it may want to authorize the Executive Secretary to provide a written notification to of the Commission's decision.

- D. Authorize the Executive Secretary to provide written notification to of the Commission's decision in this docket to the parties and the EQB.