

E-015/M-93-676 ORDER AUTHORIZING CERTIFICATION OF MP'S  
APPLICATION FOR ALLOWANCES FROM THE CONSERVATION AND RENEWABLE  
ENERGY RESERVE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of the Request of Minnesota Power for Commission Certification of Eligibility for Renewable Energy Allowances From the Energy Conservation and Renewable Reserve Under 40 CFR 73.82

ISSUE DATE: December 22, 1993

DOCKET NO. E-015/M-93-676

ORDER AUTHORIZING CERTIFICATION OF MP'S APPLICATION FOR ALLOWANCES FROM THE CONSERVATION AND RENEWABLE ENERGY RESERVE

**PROCEDURAL HISTORY**

On July 6, 1993, Minnesota Power (MP) applied to the Commission for certification that it was subject to the Commission's least cost planning process, and that the process meets the requirements of certain rules of the federal Environmental Protection Agency (EPA), 40 CFR 78.82 (a) (4) (i-v). The matter was assigned to the current docket.

On July 23, 1993, the Commission issued an order in generic Docket No. E-999/CI-91-923 finding that its resource planning process (Minn. Rules, Chapter 7843) is a "least cost planning process" as that term is used in 40 CFR 78.82 (a) (4) (i-v) and that it meets the requirements for such a process set forth in paragraphs (i) through (v) of that section. The Order further stated that the Commission would review specific requests by utilities for certification of eligibility for allowances either on an ex parte basis or, if deemed necessary, after comment from interested parties.

On November 24, 1993, the Commission met to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. BACKGROUND: THE ALLOWANCE RESERVE PROGRAM**

The Federal Clean Air Act Amendments (CAAA) of 1990 established an allowance trading system for the emission of sulphur dioxide (SO<sub>2</sub>). As part of the allowance system, 300,000 allowances were set aside to be awarded by the Environmental Protection Agency

(EPA) to utilities which 1) implement qualified energy conservation measures or 2) utilize renewable energy between January 1, 1992 and December 31, 1999. In order to be eligible to receive an allowance, a Minnesota utility must demonstrate to the EPA that it is subject to a qualified integrated resource planning process.

Under the Allowance Reserve Program, the EPA will allocate allowances based on verified kilowatt hours saved through the use of one or more qualified energy conservation measures or based on kilowatt hours generated by qualified renewable energy generation. Whether an applicant's energy conservation measure or renewable energy generation is "qualified" will be determined by the EPA pursuant to criteria established in the regulations.

## **II. THE COMMISSION'S ROLE: CERTIFICATION FINDINGS REQUIRED**

The allowance-award process established by the CAAA regulations involves a major screening role for the Commission. The EPA relies substantially on the determinations of the Commission with regard to whether applicants meet the eligibility requirements for allowances from the Reserve. The certification responsibilities of the State Utility Commission having rate-making jurisdiction over the applicant are as follows:

**Commission Certification Element 1:** The State Commission must certify that the applicant's least cost plan or least cost planning process meets the requirements of 40 CFR 73.82 (a) (4), (5), (6) and (7).

**Commission Certification Element 2:** If the applicant is claiming savings for a conservation or renewable energy measure not listed in Appendix A of 40 CFR Part 73, the State Commission must certify that the measure meets the criteria of 40 CFR 73.81 (a) (2).

**Commission Certification Element 3:** If the applicant claims that verification of its conservation measures has been performed by the State and the state authority has utilized a verification methodology to determine the applicant's entitlement to a performance-based rate adjustment, the State Commission must certify that the verification procedures meet the ratemaking entity's requirements and the information and calculations (claimed energy savings) contained in the applicant's form are true and correct. 40 CFR 73.81(a) (2).

### III. COMMISSION CERTIFICATION ELEMENT 1: MAXIMUM PRACTICABLE IMPLEMENTATION OF A QUALIFIED LEAST COST PLANNING PROCESS

The Commission's ability to make this certification is based upon two separate findings. First, that MP is subject to a qualified least cost planning process and second, that it is implementing that process to the maximum extent practicable.

#### A. MP Subject to a Qualified Least Cost Planning Process as Required by Paragraphs (a)(4)(i) through (v) of 40 CFR 73.82

In generic Docket No. E-999/CI-91-923, the Commission found that Minnesota's major investor-owned electric utilities are subject to a least cost planning process that meets the requirements of paragraphs (a)(4)(i) through (v) of 40 CFR 73.82. The Commission's generic finding is applicable to MP in the current docket.

#### B. MP is Implementing a Qualified Least Cost Planning Process to the Maximum Extent Practicable as Required by Paragraph (vi) of 40 CFR 73.82 (a)(4)

MP may meet the requirement of paragraph (vi) of 40 CFR 73.82(a)(4) by implementing to the "maximum extent possible" either 1) a least cost plan or 2) a least cost planning process.<sup>1</sup>

To clarify the inquiry at hand, the Commission will begin by considering whether MP is implementing the least cost planning process to the maximum extent possible. Parties in the generic docket advanced several possible interpretations and varying standards that could apply to making the "maximum extent practicable" determination. At one pole of the discussion, it was argued that acceptance of a utility's resource plan indicates that the company is following the resource planning process to the maximum extent practicable. This standard is too loose. It

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<sup>1</sup> See In the Matter of an Investigation into the Effects of the Clean Air Act Amendments on Minnesota Electric Utilities, Docket No. E-999/ CI-91-923, ORDER FINDING THAT MINNESOTA'S RESOURCE PLANNING PROCESS MEETS CERTAIN FEDERAL REQUIREMENTS (July 23, 1993). In that case, the Izaak Walton League of America (IWLA) argued that 40 CFR 73.82(a)(4)(vi) requires that the Commission find that the utility is implementing either the five standards cited previously, or some other definition of "ideal" least cost planning, to the maximum extent possible. The Commission found that the IWLA's interpretation was incorrect. The Commission stated that a plain reading of the regulation's language shows that the thing which the Commission must find is being implemented to the maximum extent possible is the "least cost plan or a least cost planning process." Order at page 6.

overlooks the fact that the Commission's Order accepting the Company's resource plan by the Commission and the concerns expressed therein are part of the planning process. Hence, compliance to the maximum extent practicable with the directives of that Order as of the time certification is requested must be shown.

At the other extreme, a utility could be required 1) to provide at the time it requests certification a new resource plan that fully integrates the directives of the Commission Order accepting the resource plan and 2) to show that each element of the approved resource plan was being implemented on schedule, and 3) to make such a showing at a hearing held for the purpose following a comment and reply period.

Regarding the first element of that proposal, provision of a new resource plan integrating the directives of the Commission Order accepting the resource plan will not be required. To have a comprehensively updated plan on file at this time is not a necessary part of the planning process. The approved resource plan read together with the Order accepting that plan provides adequate record of what the Company is required to do. This is all the specificity that the planning process requires at this time.

The second element of the proposal focuses on implementation of the plan, and as such, does not pertain to the current analysis of whether the planning process is being implemented to the maximum extent possible.

The third element of the proposal is that a comment and reply proceeding be provided prior to making the required determination, i.e. whether the company is complying with the planning process to the maximum extent practicable *at the time certification is requested*. Since the first part of the planning process (applying for and obtaining Commission approval of the plan) has been completed, the only remaining question is whether the next relevant part of the planning process (compliance with the directives contained in the Order approving the plan) is being completed to the maximum extent practicable.<sup>2</sup>

The Commission is inclined to tailor the determination process (i.e. the process it will require to make that determination) in light of 1) the number and severity of the deficiencies it noted when it approved the company's resource plan and 2) the sources available to verify the company's compliance.

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<sup>2</sup> Proof that the items in the approved plan are being implemented on schedule would be required as part of a showing that the plan was being implemented to the maximum extent practicable, but is not required as part of a showing that the planning process is being fully implemented.

Taking these two considerations in to account, the Commission finds that the information filed to date is sufficient without further filing, comment or hearing to determine that at the time of this Order MP is making satisfactory progress<sup>3</sup> in implementing the directives of the Commission's June 2, 1993 Order accepting the Company's resource plan.<sup>4</sup> The bases of the Commission's finding are the compliance reports on file from the Company and the Department. On October 15, 1993, the Company filed a report as required in the Commission's June 2, 1993 Order. This report indicates satisfactory progress on the Commission's directives. In its report also filed on October 15, 1993, the Department confirmed that MP has made a sincere effort to comply with one of the Commission's principal directives, that the Company discuss planning issues with interested parties.

Based on 1) the fact that MP has already obtained approval of its resource plan and 2) the finding made in the preceding paragraph that MP is making satisfactory progress in implementing the directives of the Commission's June 2, 1993 Order, the Commission concludes that at the time of this Order MP is implementing a Commission-approved least cost planning process to the maximum extent practicable.<sup>5</sup>

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<sup>3</sup> This is not to find (nor is it necessary to find) that all the Commission's June 2, 1993 directives have been completed or substantially completed. Many of the directives relate to what must be contained in the Company's next resource plan and, hence, cannot be completed until the Company files its 1994 resource plan. The applicable standard (maximum practicable implementation) requires judging the maximum level of implementation that is practicable at the point certification is requested, not at some other hypothetical point such as when compliance with the directives is or should be substantial complete.

<sup>4</sup> For a contrary finding, see In the Matter of the Request of Otter Tail Power Company for Certification of Eligibility for Federal Renewable Energy Allowances, Docket No. E-017/M-93-675, ORDER REQUIRING FURTHER FILINGS (September 24, 1993). In that case, based on the unavailability of adequate information on Otter Tail Power's (OTP's) performance under the May 19 Order accepting the Company's resource plan, the Commission declined to find that OTP had implemented the resource planning process to the maximum extent practicable until the Company had filed additional information.

<sup>5</sup> In light of the conclusion that MP is implementing the least cost planning process to the maximum extent practicable, the Commission need not move on to analyze whether the Company is implementing the Commission-approved least cost plan to the maximum extent practicable. 40 CFR 73.82(a)(4).

### **C. Summary With Respect to Certification Element 1**

Based on the foregoing analysis, the Commission finds that MP is subject to a qualified least cost planning process and is implementing that process to the maximum extent practicable. Accordingly, the Commission will authorize the Executive Secretary to sign the Company's EPA Form 7610-10 (1-93) to that effect.

### **IV. COMMISSION CERTIFICATION ELEMENT 2: NOT APPLICABLE**

If in its application to the EPA, MP had claimed savings for a conservation or renewable energy measure not listed in Appendix A of 40 CFR Part 73, the Commission would have to determine whether the measures met the criteria of 40 CFR 73.81 (a) (2). Since MP does not cite any measures which do not appear in Appendix A, the Commission need not make this additional finding.

### **V. COMMISSION CERTIFICATION ELEMENT 3: ACCURACY OF CLAIMED SAVINGS**

In its application to the EPA, MP asks the EPA to grant it allowances for implementing certain conservation measures. In support of its application, the Company asserted that these measures have resulted in a certain level of energy savings and that these savings have been verified at the state level by the Commission, using a verification methodology.

In such circumstances, CAAA rules require the Commission to certify that the utility's claims of energy savings are correct and accurate. The Commission is prepared to do so. In its August 4, 1993 ORDER ACCEPTING FILINGS in Docket No. E-015/RP-93-458, the Commission evaluated these claimed savings and allowed the Company to book the resulting lost margins into the conservation improvement program (CIP) tracker. The Commission is confident that its examination of the claimed savings in Docket No. E-015/RP-93-458 is adequate to warrant the certification requested of it at this time.

### **VI. COMMISSION ACTION**

The Commission has carefully reviewed the requirements which the Commission is asked to certify under the CAAA rules. In accord with the preceding analysis and findings, therefore, the Commission is prepared to fully certify MP's proposal to the EPA, as required by the CAAA rules.

Specifically, the Commission will authorize the Executive Secretary to sign the Company's EPA Form 7610-10(1-93), indicating on behalf of the Commission that 1) MP is subject to a least cost planning process that meets the established criteria;

2) that the utility is implementing a Commission-approved least cost planning process to the maximum extent practicable; and 3) that the energy savings claims MP has made in its application to the EPA are correct and accurate.

**ORDER**

1. The Commission's Executive Secretary is hereby authorized and directed to certify, on behalf of the Commission, the items listed in Step 12 of EPA Form 7610-10 (1-93) and take such other steps to communicate with the EPA consistent with this Order.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)