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MPUC E-015/GRE-23-155

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Minnesota Power Petition for Authority to Increase Electric Service Rates in the State of Minnesota	**ORDER DENYING MOTIONS TO QUASH**

This matter came before Administrative Law Judge Kimberly Middendorf upon the Mining Customers' motions to quash subpoenas for the production of certain documents.

David Moeller, Minnesota Power, and Elizabeth Brama and Kodi Verhalen, Taft Stettinius & Hollister LLP, appeared on behalf of the applicant (Minnesota Power or Company).

Katherine M. Hinderlie, Assistant Attorney General, represents the Office of the Attorney General, Residential Utilities Division (OAG-RUD).

Richard Dornfeld, Gregory Merz, and Katherine Arnold, Assistant Attorneys General, appeared on behalf of the Department of Commerce, Division of Energy Resources (DOC-DER).

Andrew P. Moratzka and Amber S. Lee, Stoel Rives, LLP, appeared on behalf of the Large Power Intervenors (LPI) and the Mining Customers.

Robert Manning, Jorge Alonso, Justin Andringa, Ashley Marcus, and Christine Pham appeared on behalf of the Public Utilities Commission (Commission) Staff.

On March 4, 2024, the Minnesota Department of Commerce, Division of Energy Resources (Department) sought subpoenas for certain documents from Minnesota Power's large mining customers,[1] including (1) ArcelorMittal Minorca Mine, Inc., (2) Hibbing Taconite Company, (3) Mesabi Mining, LLC, (4) Mesabi Nugget Delaware, LLC, (5) Northshore Mining Company, (6) United States Steel Corporation, and (7) United Taconite LLC (collectively, the Mining Customers). The Judge granted the Department's request on March 5, 2024, and the subpoenas were served shortly

[1] United States Steel, the "Cleveland-Cliffs Entities" (ArcelorMittal Minorca Mine, Inc., Hibbing Taconite Company, Northshore Mining Company, and United Taconite LLC), and the "Mesabi Entities" (Mesabi Mining LLC and Mesabi Nugget Delaware). *See* LPI Petition to Intervene (Jan. 5, 2024) (eDocket No. 20241-201917-02).

thereafter. On March 14, 2024, the LPI filed three motions to quash[2] on behalf of the individual Mining Customers that are part of LPI's "ad hoc" organization. Minnesota Power filed a response to the Motions, in support of quashing the subpoenas for the reasons advanced by the Mining Customers, on March 18, 2024. The Department filed its response in opposition to the Motions on March 21, 2024, and the record closed.

ORDER

1. The Motions to Quash are **DENIED**.

2. The Mining Customers shall comply with the subpoenas by **4:30 p.m.** on **April 8, 2024**.

Dated: March 28, 2024

KIMBERLY MIDDENDORF
Administrative Law Judge

MEMORANDUM

Minnesota Power has applied for permission to increase its electrical service rates by $128 million in annual revenues. In part, Minnesota Power contends the increase "is driven by forecasted test-year sales to its largest customers."[3] Minnesota Power asserted that one of "the main drivers of [its] current rate increase request" is "[r]evenue changes and increased risk profile due to a significant concentration of highly cyclical industrial customers"—specifically, its mining and paper manufacturing customers.[4] The utility further explained that it faces "unique" risks among its peers due to "its customer concentration and the nature of its largest customers' industries," with more than half of retail sales coming from just two mining customers—both of which have moved to quash the Department's subpoenas—U.S. Steel and Cleveland-Cliffs, Inc.[5] Minnesota Power explained that the risks it faces from its dependence on its large industrial customers is further exacerbated by the "highly variable and largely unpredictable sales" to its taconite mining customers. Finally, Minnesota Power explained that these risks are, to some degree, mitigated by electrical service

[2] LPI Motion to Quash on Behalf of the Mesabi Entities (Mar. 14, 2024) (eDocket No. 20243-204354-04); LPI Motion to Quash on Behalf of U.S. Steel Corporation (Mar. 14, 2024) (eDocket No. 20243-204354-03); and, LPI Motion to Quash on Behalf of the Cleveland-Cliffs Entities (Mar. 14, 2024) (eDocket No. 20243-204354-02) (collectively, Motions to Quash).
[3] DOC Memorandum in Support of Request for Issuance of Subpoenas at 2 (Mar. 4, 2024) (eDocket No. 20243-204061-08).
[4] Ex. MP-___ at 3 (Cady Direct) (eDocket No. 202311-200095-06); *see also* Minnesota Power Initial Filing Vol. 2 Rate Case Overview (Nov. 1, 2023) (eDocket No. 202311-200095-06).
[5] Ex. MP-___ at 3-4 (Cady Direct) (eDocket No. 202311-200095-06).

agreements (ESAs) with its Large Power Customers "guaranteeing only a very small percentage of total annual sales revenue."[6]

On March 5, 2024, the Judge issued subpoenas requiring the Mining Customers to produce the following information the Department requested:

> A copy of any communication, including but not limited to e-mails, voicemails, and text messages, concerning the following terms or proposed terms of [Mining Customer's] presently in effect electric service agreement with Minnesota Power, an operating division of Allete, Inc:
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> (a) The term of agreement provision, including the written notice requirement for termination;
>
> (b) The firm demand provisions, including minimum firm demand, changes in firm demand, and decreases in minimum firm demand for permanent facility shutdown;
>
> (c) The incremental production service provisions, including the minimum incremental production service threshold (IPST); and
>
> (d) The all-requirements provision.

These documents were to be produced by March 21, 2024.[7]

The rules of the Office of Administrative Hearings provide that "[a]ny means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota" are allowed in a contested case proceeding.[8] The rules further authorize an administrative law judge to issue a subpoena to third parties for the discovery of documents.[9]

The Minnesota Rules of Civil Procedure permit discovery "upon a showing of good cause and proportionality" of "any matter relevant to the subject matter involved in the action."[10] The discovery rules are given "broad and liberal treatment" in order to ensure that litigants have complete access to the facts and can avoid surprises at the hearing or trial.[11] "Relevant information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible

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[6] *Id.* at 4; *see also* Ex. MP-___ at 32, 50–52 (Fredrickson Direct) (eDocket No. 202311-200095-01).
[7] *See* Motions to Quash.
[8] Minn. R. 1400.6700, subp. 2 (2023).
[9] Minn. R. 1400.7000, subp. 1 (2023).
[10] Minn. R. Civ. P. 26.02(b).
[11] *Jeppesen v. Swanson,* 68 N.W.2d 649, 651 (Minn. 1955) (quoting *Hickman v. Taylor,* 329 U.S. 495, 507 (1947)).

evidence."[12] Regardless of relevancy, however, requests for discovery will not be granted if: "(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought."[13]

The contested case rules allow the parties to use any means of discovery available under the Rules of Civil Procedure for the District Courts of Minnesota.[14] The party seeking the discovery has the burden of proof to show the discovery is needed for the proper presentation of the party's case, is not sought for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant the discovery.[15] The party opposing the discovery may raise any objections available under the Minnesota Rules of Civil Procedure, including lack of relevancy and privilege.[16]

The Minnesota Rules of Civil Procedure limit discovery to "matters that would enable a party to prove or disprove a claim or defense or to impeach a witness."[17] If a party shows both good cause and proportionality, the court may order discovery of "any matter relevant to the subject matter involved in the action."[18] The information that is sought "need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."[19]

Any person served with a subpoena may object. Minn. R. 1400.7000, subp. 3, (2023) directs the administrative law judge to:

> [C]ancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence.

The Motions to Quash set forth several reasons that the subpoenas should be quashed. LPI argues the subpoenas should be quashed pursuant to Minn. R. 1400.7000 because the request seeks the production of information that is (1) irrelevant to the rate case proceeding, (2) overly broad and unduly burdensome, (3) irrelevant to the ESAs that have been approved by the Minnesota Public Utilities Commission, and (4) privileged. None of these reasons is persuasive, as explained below.

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[12] Minn. R. Civ. P. 26.02(b).
[13] Minn. R. Civ. P. 26.02(b)(2).
[14] Minn. R. 1400.6700 subp. 2 (2023).
[15] *Id.*
[16] *Id.*
[17] Minn. R. Civ. P. 26.02(b).
[18] *Id*.
[19] *Id*.

The Mining Customers argue that the subpoenas do not seek relevant information. The parties agree that the Department's purpose in making the subpoena requests is to learn more about the protections, compromises, trade-offs, and true uncertainty involved in Minnesota Power's ESAs with five of its largest industrial customers – the Mining Customers. A significant portion of Minnesota Power's proposed $128 million rate increase "is driven by forecasted test-year sales to its largest customers."[20] The subject matter of the subpoenas is therefore central to Minnesota Power's application for a rate increase, and is obviously, plainly relevant. The evident relevance of the requested information easily surpasses the modest test of discoverability. Moreover, the amount in controversy is sufficient to warrant production of the requested information.

The Department argues that it requested the subpoenas only after first seeking the information directly from Minnesota Power, and subsequently narrowing and tailoring its requests to obtain the most pertinent information. Having learned from Minnesota Power that it no longer has responsive documents, the Department has sought the information from the other side of the contractual relationship—the Mining Companies—as the only other parties likely to have responsive information. Minnesota Power alleged it does not have the requested information. It follows, therefore, that the other entities to the contracts are the most likely, if not the only, source for the information. The Department is seeking information, specifically communications about the ESAs, not the ESAs themselves. The Mining Customers' argument that the Department was able to review the ESAs before the Commission approved them fails to recognize the information sought by subpoena differs from what the Department was privy to in its ESA review. There does not appear to be any other means of obtaining the information.

The Mining Customers argue that they are not parties to the case, and therefore should not be burdened with responding to the subpoenas.[21] The Department points out that they are nonetheless highly interested entities with much at stake in the rate case. The Cleveland-Cliffs Entities and U.S. Steel are members of the LPI, a collective of entities who are large industrial customers of Minnesota Power. LPI is a full party to this matter. It is unclear whether LPI is a legal entity as an "ad hoc" consortium. Ultimately, this distinction is immaterial. U.S. Steel and the Cleveland-Cliffs Entities are participants in this rate case and are not unduly burdened by producing the requested information. As LPI stated in its intervention petition, "energy costs" play a "critical role" in the operation of all of its member entities and "LPI therefore has a substantial interest in the

[20] DOC Memorandum in Support of Request for Issuance of Subpoenas at 2 (Mar. 4, 2024) (eDocket No. 20243-204061-08).

[21] The Mining Customers also contend that the Department was required to confer with them before seeking the subpoenas. The Judge is unaware of any such prerequisite for subpoenas.

outcome of this case" that is "unique and will not be adequately addressed or protected" without full participation in the case.[22]

The Mesabi Entities are not members of LPI, and therefore are willing participants in this case. Nevertheless, third parties are routinely subpoenaed to produce documents or provide testimony in litigation. The mere fact of not being a party does not automatically render a subpoena unduly burdensome.

The Department counters that the Mesabi Entities have sufficient interest in the outcome of this matter that compelling them to produce the requested information is not unduly burdensome. The Department points to the ESA docket for confirmation that energy costs are just as critical to the Mesabi Entities' operations as to LPI's member operations. In Minnesota Power's 2021 petition for an amended ESA with the Mesabi Entities, it noted that they "were among the eleven Minnesota Power customers originally qualified to receive" special rates for "energy-intensive trade-exposed customers."[23] The petition further noted that if the Mesabi Entities' idled assets were restarted, Minnesota Power would receive "more than $30 million in demand revenues alone during a ten-year Large Power electric service agreement."[24] The Administrative Law Judge agrees with the Department that given the importance of energy costs to the Mesabi Entities, and the size of the potential future energy demand coming from the Mesabi Entities, the requested discovery is not unreasonable despite their non-party status.

The Mining Customers also argue that responding to the subpoenas will be burdensome. However, none of them submitted any facts to support this argument. The Mining Customers contend that compliance with the subpoenas "would require every Mining Customer to search thousands of personnel files" because the request was "without definition as to whose 'communications' it seeks."[25] This argument fails for several reasons. As the Department maintains, it is likely that there are only a limited number of employees who have had any communications regarding the terms of the parties' ESAs. It also seems plausible that the names of those employees would already be known to the Mining Customers. Even if the document search was of the magnitude alleged by the Mining Customers, this is due more to the size and corporate structure of these entities than to the subpoenas.

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[22] U.S. Steel Br. at 5; Cleveland-Cliffs Entities Br. at 5; Mesabi Entities Br. at 5 ("The Mining Customers … are not a party to the case and therefore they are not before the court, or subject to its jurisdiction, and the Request for Subpoenas should be quashed."), U.S. Steel Br. at 9; Cleveland-Cliffs Entities Br. at 9; Mesabi Entities Br. at 9 ("[T]he Request for Subpoenas is overly broad and unduly burdensome because…it is served on non-parties.").

[23] *In re Minn. Power Pet. for Approval of an Amended and Restated Elec. Serv. Agreement Between Mesabi Nugget Delaware, LLC, and Mesabi Mining, LCC, and Minn. Power*, MPUC Docket No. 21-355, Minn. Power Pet. at 4–5 (May 26, 2021).

[24] *Id.* at 12.

[25] U.S. Steel Br. at 9; Cleveland-Cliffs Entities Br. at 9; Mesabi Entities Br. at 9.

Last, the Mining Customers argue that some of the communications may be privileged. This is premature and speculative. The Mining Customers have not searched for the documents, reviewed them for privilege, or produced a privilege log to evidence the privilege.

Accordingly, the Motions to Quash are **DENIED**.

K. J. M.