

**STATE OF MINNESOTA
IN COURT OF APPEALS**

*In the Matter of Minnesota Power's
Petition for Approval of the
EnergyForward Resource
Package*

**PETITION FOR WRIT OF
CERTIORARI**

Court of Appeals File No: _____

Minnesota Center for Environmental
Advocacy, Sierra Club, and
the Union of Concerned Scientists,

Minnesota Public Utilities Commission
Docket No. E-015 / AI-17-568

Relators,

Date of Decision: January 24, 2019
Date Reconsideration deemed denied:
April 15, 2019

vs.

Minnesota Public Utilities Commission,

Date and Description of Events Triggering
Appeal Time: April 8, 2019 EQB Notice of
Denial of EAW and April 15, 2019 Notice:
Denial of Reconsideration

Respondent.

TO: The Court of Appeals of the State of Minnesota:

Minnesota Center for Environmental Advocacy, Sierra Club, and Union of Concerned Scientists (collectively “Petitioners”) hereby petition the Court of Appeals for a Writ of Certiorari to review the final decision of the Minnesota Public Utilities Commission (“PUC”) issued as an Order, dated January 24, 2019, (attached as Exhibit A) conditionally approving certain affiliated interest agreements with respect to the construction and operation of the proposed Nemadji Trail Energy Center (“NTEC”). The PUC’s final decision approves, among other things, affiliated interest agreements that will result in Minnesota Power’s control of 50% of the NTEC plant as part of its rate-base. This decision was made without first satisfying the requirements of the Minnesota Environmental Policy Act, Minn. Stat. § 116D. Specifically, the PUC made this decision

without first deciding on the need for an Environmental Assessment Worksheet (“EAW”) or completing an Environmental Impact Statement or EAW for the environmental impacts that will result from the project, which in this case is the construction and operation of a gas-fired electric generating power plant in Superior, Wisconsin.

The PUC’s final decision was made after a contested case hearing before an Administrative Law Judge (“ALJ”). The ALJ found that the affiliated interest agreements were inconsistent with the public interest and she recommended that the PUC not approve them. The PUC ignored the ALJ’s conclusions and recommendations and approved the affiliated interest agreements. This PUC decision was arbitrary and capricious, and was made contrary to law.

The January 24, 2019 decision was tolled by the timely submission, on February 13, 2019, of two Petitions for Reconsideration pursuant to Minn. Stat. § 216B.27, subd. 3. The PUC took no action on the Petitions for Reconsideration. As a result, they were deemed denied on April 15, 2019, pursuant to Minn. Stat. § 216B.27, subd. 4. On the same date, the PUC formally notified the public that the Petitions for Reconsideration were deemed denied.

The time to appeal was triggered by the publication, in the April 8, 2019 edition of the Environmental Quality Board Monitor, of the PUC’s final denial of the need for an EAW, and by the April 15, 2019 statutory denial of the Petitions for Reconsideration

Appeals of a final decision on the need for an Environmental Assessment Worksheet are reviewed by the Court of Appeals pursuant to Minnesota Statute § 116D.04, subdivision 10, which references the Minnesota Administrative Procedures Act.

Appeals from final PUC decisions are also taken pursuant to the Minnesota Administrative Procedures Act. Minn. Stat. § 216B.52. The Minnesota Administrative Procedures Act authorizes review of both types of decisions in the Court of Appeals by writ of certiorari. Minn. Stat. § 14.63.

Dated: May 1, 2019

/s/Evan Mulholland

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