CITIZENS UTILITY BOARD
Empowering Minnesota Consumers

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January 15, 2020

The Honorable David Osmek
95 University Avenue W.
Minnesota Senate Building, Room 2107
St. Paul, MN 55155

The Honorable David Senjem
95 University Avenue W.
Minnesota Senate Building, Room 3401
St. Paul, MN 55155

RE: Clean Energy First bill

Dear Chair Osmek and Senator Senjem:

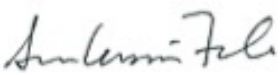
I write to respectfully share comments on behalf of the Citizens Utility Board (CUB) – an independent, nonprofit advocate for Minnesota's residential and small business utility consumers – regarding the current draft of the Clean Energy First bill, which is being heard today and on January 22 in the Energy and Utilities Finance and Policy Committee.

Thank you for bringing this bill forward and for all of the work you have done to get the bill to this point. At its core, this bill advances a simple, consumer-friendly framework for energy resource planning decisions: If it can be affordable and reliable to use clean energy, then we should. If, in a particular case, using only clean energy options would be too expensive or would make the electricity system unreliable, then it is reasonable to use fossil fuel sources. This bill makes the priorities clear – carbon-free, affordable energy and electricity system reliability – and then provides that decisions be made in each case based on the facts. Utility resource decisions are very complex, technical questions, which is why state law delegates the details of these questions to the Public Utilities Commission (PUC). This bill sets the goals and parameters, and then asks the PUC to do its job. This draft also resolves a great deal of the consumer issues from last year's bill, by removing most of the language – unrelated to clean energy issues – that would have increased rates.

However, CUB continues to be concerned that some provisions of the bill would negatively affect Minnesota consumers. I am enclosing with this letter a list enumerating these concerns.

Thank you for your attention to these matters. I very much appreciate your openness to discussion and hope to continue conversations in order to resolve these issues.

Sincerely,



Annie Levenson-Falk
Executive Director

Enclosure

cc: Members, Minnesota Senate Energy and Utilities Finance and Policy Committee

Concerns of the Citizens Utility Board regarding
Clean Energy First discussion draft
January 15, 2020

Lines 1.17-1.19 add language requiring that utility rates be set "based on cost of service, while considering noncost factors such as economic growth, job retention," and other factors. It seems reasonable to say that rates should be grounded in costs – and this is a primary factor in ratemaking today. However, this language would significantly harm ratepayers for a number of reasons.

- Cost of service is a very important factor in setting rates, but it is not the only factor. Affordability of rates is at least as important – low-income Minnesotans must be able to afford electricity service. Risk is important, too. Different classes of customers impose different levels of risk on utility systems, and these risks should be taken into account. Different customer classes also receive and provide varying benefits to the system, which should be likewise accounted for. None of these factors are listed in the language here.
- The language requires rates to be based on cost while only considering other factors, which not only elevates cost over all other considerations; it would open the Public Utilities Commission (PUC) to lawsuits if they allowed factors other than cost to influence ratemaking, thus making the additional considerations listed here essentially irrelevant.
- The idea that rates can be set based strictly on costs alone fails to acknowledge that cost allocations are subject to imprecision and judgment of regulators, utilities, and stakeholders. There are multiple reasonable ways to calculate cost of service, and there is no single correct answer.
- Minnesota regulators and stakeholders are currently considering options to transition utility regulation from rewarding utilities based strictly on costs and investments to rewarding them for achieving outcomes that benefit their customers and the public (see PUC Docket No. 17-401). Requiring rates to be set strictly based on cost of service would prevent any shift in this direction and could require elimination of those performance incentives that currently exist.

Line 5.9 provides that hydrogen technologies are included in the definition of a carbon-free resource. This definition should be modified to include only hydrogen from carbon-free sources.

Lines 5.10-5.17 provides that power generation utilizing carbon capture and storage is included in the definition of a carbon-free resource, as long as certain requirements are met. CUB is still evaluating these lines to fully understand their effects.

Line 6.28 reduces the existing requirement that utilities evaluate options for 50 and 75 percent of their energy needs from clean sources to only 50 and 75 percent of new resources, making this planning requirement essentially inconsequential. CUB is aware of no harm in keeping the existing language, as it only requires a utility to consider clean energy at these levels in integrated resource planning, with no determination that such an energy mix would be selected.

Line 7.6 limits the Clean Energy First bill to resources within the state of Minnesota. In other words, it allows utilities to charge customers for carbon-emitting resources located outside of Minnesota without demonstrating that carbon-free alternatives would not be in the public interest. This is neither in consumers' interest nor necessary under the commerce clause of the US constitution. Such a limitation is neither consumers' interest nor necessary. The commerce clause prohibits a state from controlling commerce that occurs entirely outside its borders, but the state PUC has jurisdiction over what is included in the rates that Minnesota utilities charge to Minnesota customers for their energy. The commerce clause does not preclude PUC authority over certificates of need (which only apply to in-state projects), resource planning (which evaluates the size, type and timing of resources, not their location), or power purchase agreements (state public utilities have

always regulated the contracts of monopoly utilities operating in the states, and courts have consistently upheld their authority to do so). Further, this provision would be a significant step backward from current law; the preference for renewable energy facilities under Minn. Stat. § 216B.2422, subd. 4, which the present bill would repeal and replace, applies to all resources considered under integrated resource planning or certificate of need proceedings and has stood for nearly 30 years.

Lines 7.15-7.23 require the PUC to consider potential benefits of locating resources at sites that "previously held electric generation" and of refueling an existing carbon-emitting resource with a fuel that emits less carbon. CUB is still evaluating these provisions to understand their effects.

Lines 8.9-8.12 and 11.18-11.19 provide that the Clean Energy First framework does not apply to resources that have been proposed by utilities prior to the bill's enactment – even though those resources may be undergoing fresh consideration and may be many years away from beginning operations. CUB believes that the Clean Energy First framework should be applied to utility resource planning whenever feasible to make sure that utilities do not invest consumer funds in resources that will not be cost-effective over the long term.

Lines 8.13-8.24 states that a public utility "shall" be entitled to own assets needed to replace retiring facilities, provided the utility demonstrates that it is "reasonably" in the public interest and the utility is on a path to a minimum level of carbon reduction. With the public interest demonstration included, CUB is comfortable providing for utility ownership. However, the "shall" should be replaced with "may" in order to allow full consideration by the PUC. Additionally, the word "reasonable" on line 8.23 introduces unnecessary uncertainty and potential for legal challenges and should be deleted.

Lines 8.25-8.27 exempt peaking generation facilities from the Clean Energy First framework. CUB agrees that it may be necessary to continue to operate natural gas peaker plants in order to affordably and reliably integrate variable resources such as wind and solar power. However, the resource planning process under the Clean Energy First framework will demonstrate the degree to which such plants are warranted; indeed; the framework is intended for exactly that type of consideration. Exempting peaking facilities from the Clean Energy First requirement creates a potentially costly loophole.

Additionally, the author may have intended the word "subdivision" on line 8.25 in place of "section." CUB's understanding is that the intention here is to exempt peaker pants from the Clean Energy First framework, and not from the entire resource planning section of Minnesota statute.

Lines 8.28-8.31 address the application of Clean Energy First to purchases from MISO. CUB is continuing to evaluate this provision.

As above, the author may have intended to use the word "subdivision" in place of "section" here.