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July 22, 2015

VIA ELECTRONIC FILING

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101

Re: Great River Energy's Opposition to Environmental Intervenors' Motion to Compel Disclosure and Re-Designate Information as Public
Docket No. ET-2/RP-14-813

Dear Mr. Wolf:

Great River Energy ("GRE") submits the enclosed Opposition to Environmental Intervenors' Motion to the Commission to Compel Disclosure of Information from Great River Energy and Re-Designate Information as Public, filed on July 10, 2015.

If you have any questions, please contact me at (612) 340-5612.

Very truly yours,

/s/ B. Andrew Brown
B. Andrew Brown

BAB/ks
cc: Service List

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of Great River Energy's
2015-2029 Resource Plan

Docket No. ET-2/RP-14-813

**GREAT RIVER ENERGY'S OPPOSITION TO
ENVIRONMENTAL INTERVENORS' MOTION TO COMPEL DISCLOSURE FROM
GREAT RIVER ENERGY AND RE-DESIGNATE INFORMATION AS PUBLIC**

Great River Energy (GRE) requests the Commission deny Environmental Intervenors' motion to (i) compel production of estimated revenue from sales of electricity and steam generated by the Spiritwood plant to Dakota Spirit AgEnergy and Cargill, and (ii) re-designate GRE's operation and maintenance (O&M) costs as public information. The motion should be denied in its entirety because it is untimely, coming more than two months after the close of the reply comment period.

Even if the Commission were inclined to consider the motion to compel in spite of its untimeliness, the motion should still be denied. The requested revenue information is not relevant to the Commission's consideration of GRE's integrated resource plan (IRP) and the burden and potential harm to GRE and GRE's steam sale customers, who are not parties to this proceeding, would significantly outweigh the probative value of the information sought. Additionally, the O&M cost information has already been produced, has been properly

designated as non-public data, and appropriate justification for such designation has been provided.

I. The Motion is Untimely.

Environmental Intervenors' motion comes more than two months after the close of the reply comment schedule set by the Commission.¹ Like a court scheduling order, the Commission comment schedule is an important case-management tool that helps move a docket toward timely and efficient disposition.² Environmental Intervenors' failure to exercise "diligence in obtaining or seeking discovery" supports denial of the motion,³ as Environmental Intervenors have provided no compelling justification for allowing discovery after the close of the comment period or for delaying this IRP proceeding.

Environmental Intervenors attempt to justify the tardy filing of the motion by pointing to the Supplemental Reply Comments filed by GRE. But those Supplemental Comments were offered for a very narrow purpose: to respond to a specific new analysis related to Spiritwood raised by Environmental Intervenors for the first time in their Reply Comments. Environmental Intervenors' new analysis substantially relies on an inaccurate understanding of the MISO market. The Supplemental Reply Comments sought to correct the inaccuracies. The Supplemental Comments raised no new issue requiring additional discovery. Environmental Intervenors should not be allowed to seek additional discovery long after the time established

¹ Notice of Comment Period on GRE's Resource Plan (Nov. 7, 2014) (requiring submission of reply comments on the merits of the plan by May 1, 2014).

² See, e.g., *Consumer Justice Ctr. P.A. v. Trans Union L.L.C.*, No. A05-1433, 2006 WL 920182, at *2 (Minn. Ct. App. Apr. 11, 2006) (unpublished) (citing Minn. R. Civ. P. 16.01, 16.02).

³ *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. Ct. App. 2006) (affirming denial of motion to extend discovery period as untimely where motion was filed two days before discovery deadline).

by the Commission's comment schedule when they had ample opportunity to bring this motion at an earlier stage.

II. The Production and Re-designation Requests Are Neither Reasonable nor Necessary.

Even if the Commission were to find Environmental Intervenors' motion to be timely, it should still deny the motion. With respect to revenue data, the requested information is not relevant to the Commission's evaluation of GRE's IRP and requiring GRE to produce the requested information would impose an unreasonable risk of possible disclosure or misuse of highly confidential contract terms. With respect to the O&M costs, GRE's designation is reasonable and fully supported. Re-designation is not necessary since this information has been produced and can be used by Environmental Intervenors as non-public data in presenting their case.

A. The Request to Compel Disclosure of Revenue Information Should Be Denied.

The annual estimated revenue from the sale of electricity and steam to Dakota Spirit AgEnergy and Cargill that Environmental Intervenors seek to receive are based on a complex, confidential pricing formula found in the agreements with those counterparties. Those agreements contain highly sensitive, confidential business information belonging to each of the counterparties. Before this information could be produced, the consent of each of the counterparties would be required. Under similar circumstances, the Commission has recognized that contracts between retail customers and generators "are likely to contain much detailed, sensitive information," and has previously denied requests to compel the discovery of

such contracts.⁴ Requiring GRE to produce this information would impose an unreasonable burden and business risk on GRE, Dakota Spirit AgEnergy, and Cargill. Such significant risk of possible disclosure or misuse of this most sensitive information is not necessary to the Commission's consideration of the IRP pursuant to the criteria established by the Commission.

The Commission has properly denied to compel discovery where "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."⁵ Environmental Intervenors assert the revenue data is relevant to their claim that "scheduling retirement of Stanton Station should be a priority given . . . GRE's excess capacity and risky actions such as operating Spiritwood at a loss."⁶ However, Spiritwood's operations are completely irrelevant to whether or not Stanton Station should be retired. In other words, the discovery proposed by the Environmental Intervenors will not resolve the issue they have asserted.

Environmental Intervenors have not demonstrated the information they seek contributes to the Commission's evaluation of GRE's resource plan with respect to any of the factors established under Minnesota Rule part 7843.0550, subpart 3. In fact, Environmental

⁴ *In the Matter of the Petition by Renewable Energy SD, LLC for Resolution of Cogeneration and Small Power Production Disputes with Benco Electric Cooperative, Federated Rural Electric Association, Meeker Cooperative Light & Power Association, Nobles Cooperative Electric and Tri-County Electric Cooperative under Minn. Stat. § 216B.164, Subd. 5, CG-12-146, Order Granting Motion to Compel in Part (MPUC Dec. 17, 2012) (declining to compel for copies of contracts between retail customers and wind power generation developer).*

⁵ Minn. R. Civ. P. 26.02; *see, e.g., In the Matter of a Commission Investigation into Qwest Corporation's Provision of Network Elements to CLECs and Into Related Marketing Practices Targeting CLEC Customers, CI-09-1066, Order on Motion to Compel (OAH Nov. 15, 2010).*

⁶ *Environmental Intervenors' Motion to the Commission to Compel Disclosure of Information from Great River Energy and Re-Designate Information as Public, at 2 (July 10, 2015).*

Intervenors only assert Spiritwood electricity and steam sales revenue is “relevant to how GRE is covering its operating costs and whether the Commission should or should not endorse a particular course of action in this IRP proceeding for GRE to cover its operating costs going forward.”⁷ Cost recovery is a rate design issue that goes beyond the scope of this IRP proceeding. Further, GRE is not rate-regulated by the Commission. Our members make decisions on GRE’s rates.

GRE has provided Environmental Intervenors and other parties with forecasts of all costs related to all existing and potential generation resources used in our IRP model. Environmental Intervenors have been provided all fixed and variable maintenance costs, tax forecasts, insurance, depreciation, book value, and potential decommissioning costs of all generation. Accordingly, Environmental Intervenors already have received significant information relevant to their claim that the decommissioning of Stanton Station should be included in GRE’s IRP, and their motion fails to demonstrate how receipt of highly sensitive sales revenue information concerning Spiritwood Station and requiring the consent of two third-parties would advance their arguments regarding Stanton Station.

B. The Request to Re-designate O&M Costs Should be Denied.

Environmental Intervenors allege GRE has improperly designated various information as non-public but ultimately requests only that the Commission require GRE to re-designate its O&M expenses.⁸ GRE’s O&M costs meet the definition of trade secret information.⁹ GRE buys

⁷ Environmental Intervenors’ Motion, at 2.

⁸ Contrary to Environmental Intervenors’ assertions, GRE has provided a forecast of market prices as public. The hourly and annual average price forecast used in modeling was provided in the workbook named Minnesota Hub Price 2014-03-4.xlsx in response to MCEA IR 2. A copy of the price forecast was also provided as part of the non-public output data in the MktTrade worksheet of each case result workbook. GRE has provided a forecast of all costs related to all existing and potential generation resources used in the model. Not only were the

and sells energy on MISO in a competitive market. Accordingly, GRE treats all counter-party information and operational data as non-public because public knowledge of this information could hinder its negotiations, causing it to obtain less valuable transactions. Neither FERC nor any other regulator requires GRE to make its generation O&M costs public. The information is not otherwise generally known or ascertainable, and therefore GRE *can* derive economic value from ensuring such information continues to be not generally known or ascertainable. The designation of GRE's O&M costs as trade secret is thus appropriate. Additionally, GRE has complied with all applicable requirements for designation of its trade secret information in this proceeding. Under these circumstances, it is reasonable that the Commission deny Environmental Intervenors' motion to compel re-designation and maintain treatment of O&M costs as non-public data. Moreover, the relevant information has already been provided to Environmental Intervenors pursuant to the terms of the Protective Agreement. There is no reason why the designation of data as trade secret should inhibit Environmental Intervenors' ability to analyze the information provided or present their case.

III. Conclusion

For the reasons stated above, GRE respectfully requests the Commission deny Environmental Intervenors' motion to (i) compel production of estimated annual revenue from sales of electricity and steam to Dakota Spirit AgEnergy and Cargill, and (ii) to re-designate GRE's plant O&M costs as public information.

Environmental Intervenors provided all fixed and variable maintenance costs, they were also provided GRE's forecast of taxes, insurance, depreciation, book value, and potential decommissioning costs for all generation.

⁹ Pursuant to the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, trade secret information is information that is subject to the efforts of an entity that are reasonable under the circumstances to maintain its secrecy and that derives independent economic value, actual or potential, from not being generally known to other persons who could obtain economic value from its disclosure or use.

Dated: July 22, 2015

Respectfully submitted,

GREAT RIVER ENERGY

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Kristin M. Stastny hereby certifies that on the 22nd day of July, 2015, on behalf of Great River Energy she electronically filed a true and correct copy of the attached Opposition on www.edockets.state.mn.us. Said documents were also served via U.S. mail and electronic service as designated on the attached service list.

/s/ Kristin M. Stastny
Kristin M. Stastny

Subscribed and sworn to before me
this 22nd Day of July, 2015.

/s/ Alice Jaworski
Notary Public, State of Minnesota
My Commission Expires: January 31, 2020

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