BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David Boyd	Commissioner
Nancy Lange	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

David R. Moeller
Senior Attorney
Minnesota Power
30 West Superior Street
Duluth, MN 55802

SERVICE DATE: January 31, 2014

DOCKET NO. E-015/M-13-1084

In the Matter of Minnesota Power's (MP) Petition for Approval of an Amendment to the Electric Service Agreement Between Boise, Inc. and Minnesota Power

The above entitled matter has been considered by the Commission and the following disposition made:

Approved MP's proposed Amendment to the Electric Service Agreement (ESA) with Boise, Inc.

Approved MP's request for a continued waiver to the four-year cancellation provision in its LP Service Schedule for the purposes of this Amendment.

Approved MP's request for a variance to Minnesota Rule 7829.3200.

The Commission agrees with and adopts the recommendations of the Department of Commerce, which are attached and hereby incorporated into the Order. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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division of energy resources
Minnesota Department of Commerce

85 7th Place East, Suite 500, St. Paul, MN 55101-2198
Main: 651.539.1500
Fax: 651.539.1549

mn.gov/commerce/energy

December 24, 2013

PUBLIC DOCUMENT –
TRADE SECRET DATA HAS BEEN EXCISED

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/M-13-1084

Dear Dr. Haar:

Attached are the PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

> Minnesota Power's Petition for Approval of an Amendment to the Electric Service Agreement Between Boise, Inc. and Minnesota Power.

The *Petition* was filed on November 25, 2013 by:

> David R. Moeller
> Senior Attorney
> Minnesota Power
> 30 West Superior Street
> Duluth, MN 55802

As discussed in greater detail in the attached *Comments*, the Department recommends that the Minnesota Public Utilities Commission (Commission) **approve** Minnesota Power's Petition. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ MICHAEL N. ZAJICEK
Rates Analyst

MNZ/sm
Attachment

PUBLIC DOCUMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

PUBLIC COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET NO. E015/M-13-1084

I. BACKGROUND

Minnesota Power (MP or the Company) and Boise, Inc. (Boise) first entered into an Electric Service Agreement (ESA) on December 16, 1980, where Boise agreed to purchase from MP any electric service needed above their own generating capacity. The Minnesota Public Utilities Commission (Commission) approved an extension to this agreement on August 13, 1996,[1] and later approved an amendment to the ESA to include Boise in the Large Power Incremental Production Service Rider, to adjust the rates paid by Boise due to generation, and to extend the Generation Deferral Rate through 2002.[2]

MP and Boise entered into a restated ESA on May 10, 2002, which was approved by the Commission in an Order dated December 20, 2002, extending Boise's ESA though 2008.[3] On December 10, 2008, MP proposed an amendment to the 2002 ESA, which was later approved by the Commission in an Order dated May 13, 2009.[4] This amendment extended the ESA through 2013, and reduced Boise's payments for Replacement Firm Power Service. In the 2008 proceeding, the Commission granted a variance to Minnesota Rule 7825.3200, which requires a 90-day notice prior to the effective date of any proposed rate change.

On November 25, 2013, MP filed a Petition with the Commission for approval of an amendment to the ESA with Boise (Amendment). MP developed this ESA Amendment in response to operational changes at Boise International Falls' paper mill due to what the filing calls "cyclical

[1] Docket No. E015/M-96-539
[2] Docket No. E015/M-02-1527
[3] Docket No. E015/M-02-1527
[4] Docket No. E015/M-08-1466

decline" in paper demand. The Amendment would lower the Incremental Service Requirement and thus the electricity payments for Boise, while including a commitment from Boise to purchase all of its electric service requirements from the Company for at least ten more years.

According to the petition, Boise is the third largest producer of office paper in North America, with paper mills in three states. In response to market conditions in May 2013, Boise announced the closure of two older, smaller paper machines, and an off machine coater at its International Falls paper mill. According to the Petition, these moves were made to increase Boise's competitive position. Boise still operates two larger paper machines at the International Falls mill. The closure of the two smaller plants reduced Boise's electricity needs, creating the need for a revised ESA.

The Company notes that the currently proposed Amendment to the ESA is similar to the 2002 ESA with the exception for provisions that modify some of Boise's commitments.

MP also requested a variance from the Minnesota Rule 7825.3200 which requires 90 days' notice of any proposed rate change.

II. SUMMARY OF PETITION

MP filed this Petition for an amendment to its Electric Service Agreement with Boise under Minn. Stat. §216B.05, Subd. 2a, which states:

> Subd. 2a. **Electric service contract.** A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval by the commission pursuant to the commission's rules of practice. Contracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes.

The key provisions in the proposed ESA Amendment are:

A. Extension of the termination date, such that Boise's International Falls paper mill must purchase its electric service requirements from MP at least until December 31, 2023.

B. Reductions of the Incremental Service Requirement for Boise and provisions to account for potential future decreases in electric service need by Boise.

C. Inclusion of an energy efficiency mechanism to allow Boise to realize benefits of electric efficiency improvements.

D. Establishment of a weekly expedited billing process.

III. DEPARTMENT ANALYSIS

A. INTRODUCTION

The ESA Amendment should be approved only if it is in the public interest. For the ESA Amendment to be in the public interest it must meet the following conditions:

1. The variable cost to MP of providing electric service to Boise must be less than the revenue received by MP from providing the service.

2. MP's other ratepayers must not be negatively affected by the ESA Amendment.

3. The Rates under the ESA Amendment must not be discriminatory, i.e., the rate would be available to any other large power customer of MP facing similar circumstances to those of Boise.

In addition, in its February 26, 2009, Order in Docket No. E017/M-08-1344, the Commission supported MP's commitment to provide the following information in future ESA petitions:

- Minnesota Power will clearly identify any terms of a proposed ESA that may be in conflict with the applicable tariff. Where the ESA as a service condition or term different from the LP Service Schedule, the Company will identify the difference and clarify whether specific Commission approval is required.

- Minnesota Power will describe any potential conflicts between ESA contracts and tariffs, and provide a justification as to why the ESA should control, including relevant Commission precedent. In cases of irreconcilable conflict between the applicable tariff and an ESA, Minnesota Power will take action to resolve the conflict through changes to the ESA or the tariff.

B. ANALYSIS

Below the Department analyzes each of the amendments proposed in the ESA Amendment and then assesses whether the ESA Amendment meets the conditions stated by the Department as necessary conditions for approval. Finally, the Department will provides its recommendations.

1. The Proposed Amendments

a. Terms of Agreement (Paragraph 2)

The proposed amendment to the Terms of Agreement section extends the duration of Boise's International Falls paper mill's ESA through at least December 31, 2023, continuing on a two-year rolling basis after that. The original term was to expire December 31, 2013. MP's standard LP Service Schedule language requiring a ten-year agreement and a four-year cancellation requirement is not applied to the agreement with Boise due to the long history of the ESA and the absence of the language in the 2002 agreement and the 2007 amendment. MP requests Commission approval to continue to waive the minimum four-year cancellation provisions in the LP Service Schedule.

Such an extension would be beneficial to both MP and its ratepayers. The proposed rates for Boise include a contribution to MP's fixed costs and thus the Company's ratepayers would benefit from such a contribution that would otherwise have to be collected from them. The extension would benefit MP by providing it with additional stability in its revenues by having one of its largest customers under contract through December 31, 2023.

b. Incremental Service Requirement (Paragraph 3(B))

MP proposed to reduce the Incremental Service Requirement for Boise from **[TRADE SECRET DATA HAS BEEN EXCISED]** to **[TRADE SECRET DATA HAS BEEN EXCISED]**. Remaining unchanged, and consistent with the requirements of the LP Service Schedule, the proposed ESA with Boise also has a base Contract Demand of 10,000 kW in addition to the Incremental Service Requirement. Also remaining unchanged is Boise's minimum nomination requirement.

This proposed amendment more closely reflects Boise's demand requirements which, as stated above, have been reduced due to operational changes at their International Falls paper mill. The Department notes that this amendment supports Boise's viability, which is expected to allow MP to retain a large customer on the system. Such retention would in turn benefit MP's other customers through Boise's contribution to fixed costs, as noted above.

c. Decreases in Service Requirement for Permanent Facility Shutdown (Paragraph 3(G))

MP proposed language that allows a reduction in the Service Requirement levels to **[TRADE SECRET DATA HAS BEEN EXCISED]** in the event of a permanent facility shutdown.

This proposed change lays out the procedures and timeline for the cancelation of the ESA in the event that Boise shuts down its International Falls Facility for any reason, allowing the Company enough time to take any necessary steps to mitigate the impact of losing significant load on its system. Boise benefits from having a mechanism to end the ESA in the event that the facility must close, allowing them to avoid the costs of the ESA for the remainder of the term.

d. Decreases in Service Requirement for Partial Facility Shutdown (Paragraph 3(H))

MP proposed language that allows a reduction in the Service Requirement levels to **[TRADE SECRET DATA HAS BEEN EXCISED]** in the event of a closure of Paper Machine #3 at Boise's International Falls site. Even if Boise permanently shuts down Paper Machine #3 it will continue to pay demand charges for **[TRADE SECRET DATA HAS BEEN EXCISED]**.

This paragraph addresses the possibility of the closure of another machine at Boise's International Falls paper mill. Boise benefits from having a mechanism to reduce their billed service requirement if they must close Paper Machine #3 to remain commercially viable, while MP benefits from having advanced warning of the reduction in demand and revenues.

e. Energy Efficiency Improvements (New Paragraph 3(I))

MP proposed new language that prompts a discussion between Boise and the Company regarding potential further ESA amendments in the event that Boise plans energy efficiency improvements that are expected to result in a permanent demand reduction. The intent of the language is to encourage continued energy efficiency by providing a flexible mechanism that enables Boise to realize benefits of continued electric energy efficiency investments.

This proposed amendment is consistent with the public interest in that it serves to remove a potential barrier to energy conservation, while ensuring that MP is aware of the potential demand reduction prior to implementation of any significant energy efficiency improvement.

f. Weekly Expedited Billing (New Paragraph 6(O))

MP and Boise have agreed to establish a weekly expedited billing process with credit to Boise associated with the time value of funds made available to the Company earlier than such funds otherwise would have been available under the Company's standard monthly billing cycle. Credit would be applied to the weekly bill following the due date of the standard monthly billing cycle.

This expedited billing language would provide MP with added security toward receiving payments from Boise. MP has an Expedited Billing Rider that allows for a prepayment process, but this is not applicable as it is only for taconite-producing customers and cannot be used for billing Boise. MP indicated that it agreed to two amendments to what is offered through the Expedited Billing Rider, 1) Boise's estimated weekly billing would be due in 6 business days rather than 7 days, and 2) Boise would receive its time-value-of-funds credit through a bill credit rather than a wire transfer. The Department concludes that the expedited billing process is available to other MP customers, and that the altered terms are not substantial.

2. Necessary Conditions for Commission Approval

a. Under the ESA Amendment, would the revenues received by MP from Boise exceed MP's variable costs of providing the electric service to Boise?

None of the provisions changed or added under the ESA Amendment would affect the rate charged to Boise per unit of electric service, and thus there would be no impact on MP's variable cost recovery. Changes to Boise's Incremental Service Requirement would affect the total amount of electric service that Boise is billed for, not the price per unit that is charged for that service.

b. Does the Amended Agreement negatively affect MP's other ratepayers?

The proposed ESA is an agreement between two parties with no changes that would directly affect MP's other ratepayers. The agreement allows MP to retain a customer that helps the Company recover its fixed costs, and thus the agreement provides benefits with no harm to MP's other ratepayers. Further, the Amendment ensures that MP has enough time to take any necessary steps to mitigate the impact of losing significant load on its system in the event such a loss may occur. Finally, the proposed ESA ensures that there is no disincentive to Boise to implement energy conservation improvements at its plants. Thus, the Department concludes that under the ESA Amendment none of the newly proposed provisions and other changes would negatively impact MP's other ratepayers.

c. Are the Rates and Conditions of Service under the Amended Service Contract available to other MP Large Customers facing similar circumstances to those of Boise?

Utilities rates are controlled by several Minnesota statues. Minn. Stat. §216B.03 states:

> Rates should not be unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable and consistent in application to a class of customers.

Further, as noted above, Minn. Stat. §216B.05, subd. 2a explains the regulatory treatment of electric service contracts, stating:

> Subd. 2a. **Electric service contract.** A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval by the commission pursuant to the commission's rules of practice. Contracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes.

Regarding Minn. Stat. §216B.03 and §216B.05, subd. 2a the Department concludes that Minnesota Statutes allow MP to enter into an ESA with Boise consisting of terms and conditions that are unique to this agreement as long as similar terms and conditions are available to other MP customers. In this petition, MP stated:

> In accordance with the requirements of Minn. Stat. § 216B.03, .06, and .07, Minnesota Power has always applied the LP Service Schedule and the service agreements it enters into thereunder in a fair and equitable manner between and among its LP customers. Minnesota Power intends to continue this practice by making similar terms and conditions available to other LP customers who make similar commitments to Minnesota Power.

MP has demonstrated their willingness to allow similar agreements with other LP customers in previous ESAs, such as their recent agreement with NewPage.[5] Further, the Department concludes that the expedited billing arrangement offered to Boise is substantially the same as what is offered MP's taconite customers through the Expedited Billing Procedures Rider. Therefore, the Department agrees with MP that the ESA Amendment meets the requirements of Minn. Stat. § 216B.03, .06, and .07.

d. Commission Order Docket No. E017/M-08-1344

As noted above, in its February 26, 2009 Order Docket No. E017/M-08-1344, the Commission supported MP's commitment to provide the following information in future ESA petitions:

- Minnesota Power will clearly identify any terms of a proposed ESA that may be in conflict with the applicable tariff. Where the ESA as a service condition or term different from the LP Service Schedule, the Company will identify the difference and clarify whether specific Commission approval is required.

- Minnesota Power will describe any potential conflicts between ESA contracts and tariffs, and provide a justification as to why the ESA should control, including relevant Commission precedent. In cases of irreconcilable conflict between the applicable tariff and an ESA, Minnesota Power will take action to resolve the conflict through changes to the ESA or the tariff.

MP included in the Company's analysis of each of the ESA Amendment provisions responses to each of these requirements. Specifically, MP noted that the extension of the term of the agreement, including a rolling two-year cancellation notice, is inconsistent with the four-year cancellation provisions in its LP Service Schedule. MP has requested Commission approval to waive the minimum four-year cancellation provision noting that the LP Service Schedule

[5] Docket E015/M-12-1025

provides that the cancellation notice period is subject to waiver with the approval of the Commission, and that the Commission has approved this waiver for both the 2002 ESA and the 2007 ESA amendment. MP stated that none of the other proposed amendments are addressed by the LP Service Schedule, and thus do not conflict with it or need specific Commission approval.

The Department concludes that MP has met the requirements of the February 26, 2009 Order Docket No. E017/M-08-1344. Further, the Department recommends that the Commission approve MP's request for a continued waiver to the four-year cancellation provision in its LP Service Schedule for the purposes of this Amendment.

3. Variance Request

The Company requested that the ESA Amendment be effective January 1, 2014 and thus MP requested a variance from the Commission to Minnesota Rule 7825.3200, which requires that utilities serve notice to the Commission at least 90 days prior to the proposed effective date of modified rates.

Under Minnesota Rule 7829.3200 the Commission shall grant a variance to its rules when it determines that the following requirements are met:

a. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

b. Granting the variance would not adversely affect the public interest; and

c. Granting the variance would not conflict with standards imposed by law.

MP stated that enforcement of this rule would place an excessive burden on Boise as the Company will continue to bill Boise in accordance with the current 2008 ESA, recognizing that any rate change is not effective until it receives Commission approval. If the Commission grants the variance the Company will rebill Boise for lower demand revenues retroactive to January 1, 2014 and implement the remainder of the Amendment beginning on the first day of the calendar month following receipt of the Commission Order approving the ESA Amendment. MP further stated that enforcement of Minnesota Rule 7825.3200 would impose an excessive burden on Boise as it would be charged for electricity demand greater than its current operational needs. MP indicated that the ESA Amendment was not submitted earlier due to the time necessary to obtain internal corporate approvals following the announcement of operational changes at the International Falls paper mill.

The Company stated that it is not aware of any reason why granting the variance would adversely affect the public interest. MP also stated that granting the variance would not conflict with standards imposed by law or rules governing Commission actions. Finally the Company stated that the Commission granted a similar variance when approving the 2008 ESA Amendment.

The Department concludes that MP's justification for the variance is valid, and recommends that the Commission grant a variance to Minnesota Rule 7825.3200, allowing an effective date of January 1, 2014 for the proposed Amendment.

IV. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission approve MP's proposed Amendment to the Electric Service Agreement (ESA) with Boise, Inc.

Further, the Department recommends that the Commission approve MP's request for a continued waiver to the four-year cancellation provision in its LP Service Schedule for the purposes of this Amendment.

Finally, the Department recommends that the Commission approve MP's request for a variance to Minnesota Rule 7829.3200.

/sm