

June 17, 2016

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E017/PA-16-441

Dear Mr. Wolf:

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

A Petition of Otter Tail Power Company (Otter Tail, OTP or the Company) for Approval of Transfer of Property.

The filing was submitted on May 20, 2016 by:

Mark B. Bring
Associate General Counsel
Otter Tail Power Company
215 South Cascade Street, PO Box 496
Fergus Falls, MN 56538-0496

The Department recommends **denial of the petition, without prejudice**, and is available to answer any questions the Minnesota Public Utilities Commission may have on this matter.

Sincerely,

/s/ BEN KAMARA
Public Utilities Financial Analyst

BK/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET NO. E017/PA-16-441

I. BACKGROUND AND SUMMARY OF PROPOSAL

Otter Tail Power Company (Otter Tail, OTP or the Company) is an electric utility company that provides retail electric service in the states of Minnesota, North Dakota, and South Dakota. On May 20, 2016, OTP submitted a petition seeking approval from the Minnesota Public Utilities Commission (Commission) for transfer of property. Specifically, the Company seeks to acquire approximately 3.5 miles of electric transmission facilities in Moody County, South Dakota from Northern States Power Company (NSP).

The Company maintains that, “The proposed acquisition is compatible with the public interest because it minimizes cost impact to Otter Tail’s customers.” OTP noted that its 41.6 kilovolt conductor is co-located on the electric transmission facilities it intends to purchase; thus, the acquisition would allow it to avoid building new transmission facilities for its conductor. As discussed on pages 5 and 6 of OTP’s petition, the original cost of the electric transmission facilities was \$1,177,383.75, depreciation as of December 31, 2015 is \$676,451.3 and easements were \$43,401.00. The Company also stated the final purchase will be reduced by \$40,000 to cover the cost of OTP removal of NSP’s de-energized conductor at a later date.

II. DEPARTMENT ANALYSIS

Minnesota Statutes section 216B.50 and Minnesota Rule 7825.1800 contain the considerations and filing requirements of property transfer petitions.

A. STATUTORY REQUIREMENTS

Minnesota Statutes section 216B.50, subd. 1, states:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in

excess of \$100,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission, the commission shall investigate, with or without public hearing. The commission shall hold a public hearing, upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

The Department considers the transfer of property (transmission facilities) between OTP and NSP to fall under the purview of the Commission, under Minn. Stat. § 216B.50 and corresponding Minn. Rules Part 7825.1600 and 1800. The Department considers the primary issue in this petition to be whether the transfer of property between OTP and NSP is consistent with the public interest.

B. FILING REQUIREMENTS

Minnesota Rule 7825.1800 contains the filing requirements for petitions to acquire property, as follows:

- A. Petitions for approval of a merger or of a consolidation shall be accompanied by the following: the petition signed by all parties; all information, for each public utility, as required in parts 7825.1400 and 7825.1500; the detailed reasons of the petitions and each party for entering into the proposed transaction, and all facts warranting the same; the full terms and conditions of the proposed merger or consolidation.
- B. Petitions for approval of a transfer of property shall be accompanied by the following: all information as required in part 7825.1400, items A to J; the agreed upon purchase price and the terms for payment and other considerations.
- C. A description of the property involved in the transaction including any franchises, permits, or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.
- D. Other pertinent facts or additional information that the commission may require.

Minnesota Rule 7825.1400, items A to J are filing requirements for capital structure approval, however, as noted above, are also content requirements for property transfer proposals.

- A. A descriptive title.
- B. A table of contents.
- C. The exact name of the petitioner and address of its principal business office.
- D. Name, address, and telephone number of the person authorized to receive notices and communications with respect to the petition.
- E. A verified statement by a responsible officer of the petitioner attesting to the accuracy and completeness of the enclosed information.
- F. The purpose for which the securities are to be issued.
- G. Copies of resolutions by the directors authorizing the petition for the issue or assumption of liability in respect to which the petition is made; and if approval of stockholders has been obtained, copies of the resolution of the stockholders shall be furnished.
- H. A statement as to whether, at the time of filing of the petition, the petitioner knows of any person who is an “affiliated interest” within the meaning of Minnesota Statutes, section 216B.48, subdivision 1, who has received or is entitled to receive a fee for services in connection with the negotiations or consummation of the issuance of the securities, or for services in securing underwriters, sellers, or purchasers of the securities.
- I. A signed copy of the opinion of counsel in respect to the legality of the issue or assumption of liability.
- J. A balance sheet dated no earlier than six months prior to the date of the petition together with an income statement and statement of changes in financial position covering the 12 months then ended. When the petitions include long-term securities, such statements shall show the effects of the issuance on such balance sheet and income statement.

While the Department concludes that not all of the filing requirements are relevant in this case, Otter Tail failed to provide the minimum information necessary for the Commission to determine whether the proposed transaction is in the public interest.

C. MISSING REQUIREMENTS

As noted above, Minnesota Rules 7825.1800, subpart B requires the petitioner to provide the agreed upon purchase price and the terms for payment, and subpart C requires detailed description of the method and all supporting documents used in determining the original cost of such property, including the depreciation and amortization reserves. OTP indicated that the purchase price “will be the net book value of the electric transmission facilities as of the date of closing, less Forty Thousand Dollars (\$40,000). The reduction of \$40,000 is to cover the cost of Otter Tail to remove NSP’s de-energized conductor at a later date.” The terms for payment were not provided, nor were supporting documents of the cost estimate for conductor removal.

Finally, the Company failed to address the reasons for the transaction. For example, a specific listing of the facilities¹ was not provided and no information was provided indicating whether the facilities are currently being used by Xcel or why this transfer is necessary now or at all. The record does not have the information needed for the Commission to determine whether OTP's decision to purchase the facilities and NSP's decision to sell the facilities are consistent with the public interest. As previously noted, the filing requirements listed in Minnesota Rules 7825.1400, items A to J are filing requirements for capital structure approval, however, they are also content requirements for property transfer proposals. Item F requires the petitioner to disclose the purpose of the transaction.

Minnesota Statutes, section 216B.01 states that utilities are regulated "in order to provide the retail consumers . . . with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer" While OTP's proposal may be entirely consistent with this public interest standard, the current record is insufficient to draw that conclusion.

III. CONCLUSION

The Department concludes that, while not all of the information required by Minnesota Rule 7825.1800 is information relevant to OTP's request, OTP has not provided sufficient information for the Commission to make a determination as to whether the proposed transaction is consistent with the public interest. Specifically, the Company did not sufficiently address the requirements of Minnesota Rules 7825.1800, Subparts B and C, including Minnesota Rules 7825.1400 (F). Absent submission of the required information, the Department recommends that the Commission deny OTP's request, without prejudice.

IV. RECOMMENDATION

At this time, the Department recommends that the Commission deny, without prejudice, Otter Tail's request for transfer of property.

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¹ OTP indicated that, "the transaction consists of 3.5 miles of electric transmission facilities (steel poles, conductor, shield wire, crossarms, foundations, etc.)"

CERTIFICATE OF SERVICE

I, Marcella Emeott, hereby certify that I have this day, served copies of the Following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. E017/PA-16-441

Dated this 20th day of June 2016

/s/Marcella Emeott

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