

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of a Request for Approval of the
Asset Purchase and Sale Agreement Between
Interstate Power and Light Company and
Southern Minnesota Energy Cooperative

ISSUE DATE: June 30, 2014

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E-105, E-139, E-124, E-126, E-145,
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ORDER REQUIRING ADDITIONAL
RECORD DEVELOPMENT

PROCEDURAL HISTORY

On April 15, 2014, Interstate Power and Light Company (IPL) and Southern Minnesota Energy Cooperative (SMEC) filed a joint petition for approval of the sale of IPL's Minnesota electric distribution system and assets, and the transfer of its Minnesota service rights and obligations, to SMEC. SMEC is a recently incorporated electric cooperative association made up of 12 rural electric cooperatives to whom it would ultimately transfer—in differing proportions—the assets, customers, and service rights and obligations acquired from IPL.¹

On April 22, 2014, the Commission issued a notice requesting comments on the following issues:

- 1) Does the joint petition comply with Minnesota statutes and rules?
- 2) Are there material facts in dispute?
- 3) Should the petition be referred to the Office of Administrative Hearings for contested case proceedings?

¹ The 12 cooperatives are Minnesota Valley Electric Cooperative, of Jordan; Steele-Waseca Cooperative Electric, of Owatonna; People's Energy Cooperative, of Oronoco; Tri-County Electric Cooperative, of Rushford; Freeborn-Mower Cooperative Services, of Albert Lea; BENCO Electric Cooperative, of Mankato; Brown County Rural Electrical Association, of Sleepy Eye; South Central Electric Association, of St. James; Redwood Electric Cooperative, of Clements; Federated Rural Electric Association, of Jackson; Nobles Cooperative Electric, of Worthington; and Sioux Valley Energy, of Colman, South Dakota.

- 4) If contested-case proceedings are not required, what procedural schedule should the Commission adopt for parties' comments?
- 5) Should the Commission ask the Office of Administrative Hearings to conduct public hearings on the petition in any case, and, if so, how many hearings and at what locations?
- 6) Are there issues or concerns not adequately developed in the petition on which the Commission should require further development in the record?

The Commission received comments from the Joint Petitioners, the Minnesota Department of Commerce (the Department), the Office of the Attorney General—Antitrust and Utilities Division (the OAG), and the Minnesota Municipal Utilities Association (MMUA).

The Department recommended referring the petition to the Office of Administrative Hearings for contested-case proceedings, but stated it would support direct review should the Commission prefer that process. The agency stated that, while it was unaware of any material facts currently in dispute, the transaction was so complex that disputes about material facts were likely to emerge.

The Joint Petitioners and the OAG recommended using comment-and-reply procedures to develop the record, at least initially, stating that they, too, were unaware of any currently contested material facts. The OAG also noted that the Joint Petitioners had repeatedly met with the Department and the OAG, before and after filing their petition, providing information and answering questions about the proposed transaction. The MMUA took no position on referral for contested-case proceedings, stating the record was too undeveloped at this point to make a determination on referral.

The Department and the OAG recommended holding public hearings; the Joint Petitioners indicated their willingness to participate in any public hearings the Commission ordered; the MMUA recommended adopting public participation methods designed to fully develop the record and maximize the opportunity to provide information to, and answer questions from, members of the public.

On June 19, 2014, the Commission met to determine next procedural steps.

FINDINGS AND CONCLUSIONS

I. The Transaction

This is a unique and complex transaction. In brief, SMEC would purchase IPL's Minnesota distribution system and assets and acquire its Minnesota service rights and obligations, intending to later distribute them between the 12 member cooperatives. The purchase would be financed by a loan from the National Rural Utilities Service Cooperative Finance Corporation (CFC) and secured by the assets newly acquired from IPL.

After closing, SMEC would essentially function as the utility serving IPL's former customers for up to three years. It would provide electricity purchased from IPL under a ten-year wholesale power purchase agreement; rely on transmission services secured by IPL under existing arrangements, with IPL billing SMEC for any transmission services secured on its behalf from MISO;² contract with member cooperatives for distribution-system maintenance and repair; and bill customers on behalf of the member cooperatives to which they would eventually be assigned.

Former IPL customers' rates would remain at pre-transfer levels for the three years that SMEC acted as their provider, with minor adjustments, including a \$.002/kWh credit to reflect anticipated economies, particularly in borrowing costs. During this three-year period, all member cooperatives would conduct class cost of service studies to gain a working understanding of the costs of serving the portions of their service areas acquired from IPL (Acquired Areas) and the costs of serving the pre-existing portions of their service areas (Legacy Areas).

This three-year period would be followed by a two-year transition period, during which the member cooperatives would maintain separate base rates for Acquired Areas and Legacy Areas, based on their respective revenue requirements, unless the separate base rates could be combined without increasing revenues by more than five percent. After the two-year transition period, former IPL customers would be integrated into their member cooperatives' rate structures; neither that process nor the rates likely to result from it was detailed in the filing.

The joint petition stated that SMEC and/or the member cooperatives would retain all IPL employees currently assigned to IPL's Minnesota service territory; employees choosing not to accept continued employment would receive any severance benefits to which they were entitled under IPL's existing union and non-union severance policies.

The joint petition stated that IPL would assign to SMEC and its member cooperatives all franchises acquired from local government units in its Minnesota service territory and that all such franchises were assignable.

Finally, the joint petition stated that the Commission's jurisdiction over IPL would end at closing, when IPL would stop providing utility service in Minnesota. The joint petition also stated that SMEC and the member cooperatives were voluntarily submitting to the Commission's jurisdiction to enforce the terms and commitments in the Five-Year Rate Plan described above and that at the end of the five years, Commission jurisdiction would end.

II. Additional Substantive Comments Required

The Commission finds that it cannot resolve all issues in this case on the basis of the current record. This is a unique and complex transaction, potentially affecting the rates and service quality of some 42,600 Minnesota customers currently receiving service from IPL and some 135,000 customer/members currently receiving service from the 12 cooperatives seeking to acquire IPL's Minnesota assets, service rights and obligations, and current customers.

² The Midcontinent Independent System Operator, a regional transmission organization.

While the Joint Petitioners have provided a great deal of information, many of the operational details of the transaction and its aftermath remain unclear. For example, it is unclear at this point how former IPL customers would be integrated into the member cooperatives' rate structures and what impact their integration would have on the rates of Legacy and Acquired customers. It is unclear how former IPL customers would be protected if the member cooperative to which they were assigned withdrew from SMEC, which is permitted under the cooperative association's bylaws.

The costs of acquiring all necessary local government franchises are unclear, since in some cases assignment requires the consent of the local government unit. The parameters of the relationship between IPL and SMEC are unclear; in some respects the relationship resembles a transaction between affiliates. Finally, it is unclear how broad, enduring, and recognized the Commission's authority to protect affected ratepayers would be, given the Joint Petitioners' characterization of their submission to Commission jurisdiction as voluntary and their claim that Commission jurisdiction would end before permanent rates were set for former IPL customers.

This is an illustrative, not exhaustive, list of issues requiring further development. The Commission will require additional substantive comments on these and related issues, under time frames designed to permit a prompt decision on whether contested-case procedures are necessary. The Commission will delegate to the Executive Secretary the authority to manage this additional comment process, as set forth below.

Further, at hearing, the parties indicated serious interest in holding wide-ranging, detailed discussions on the transaction during the additional comment period. The Commission encourages those discussions.

Finally, the Commission will not require public hearings at this time, while the issues are still emerging, and a Commission-approved customer notice has not yet been sent.

ORDER

1. The Joint Petitioners shall file comments responding to any additional questions posed by the Commission, the Department, the OAG, or any other interested person. Any such questions must be filed and served on the Joint Petitioners no later than July 7, 2014. The Joint Petitioners must file their responsive comments no later than August 8, 2014.
2. Any interested person may file reply comments in response to the Joint Petitioners. Reply comments must be filed no later than August 29, 2014.
3. The Commission delegates to the Executive Secretary the authority to develop and submit questions as part of this additional notice and comment process and to vary the time frames set forth herein.

4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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