

September 18, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/PA-17-400

Dear Mr. Wolf:

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

Minnesota Power's Petition for Approval of Transmission Assets and Substation Access Agreement between United Taconite LLC and Minnesota Power

The petition was filed on May 18, 2017. The petitioner is:

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

The Department recommends approval pending our review of support for the net book value and current rate case revenue requirement impact for the Transmission Assets and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ NANCY A. CAMPBELL
Analyst Coordinator

NAC/ja
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E015/PA-17-400

I. SUMMARY OF PROPOSAL

On May 18, 2017, Minnesota Power (MP or the Company) filed a petition with the Minnesota Public Utilities Commission (Commission) seeking approval of Transmission Assets and Substation Access Agreement (Agreement) between United Taconite LLC (United Taconite) and Minnesota Power. Under the Agreement, MP intends to purchase from United Taconite the identified Transmission Assets. United Taconite will grant access to and egress from the ETCO Substation located on United Taconite property through a Substation Access Easement, which will allow MP the right to access, operate, and maintain equipment at the ETCO Substation.¹ MP requests an order pursuant to Minn. Stat. §216B.50 approving the Agreement.

II. BACKGROUND

MP is an electric utility operating in a service territory which includes substantial parts of northern Minnesota. United Taconite is wholly owned by Cliffs Natural Resources (Cliffs) and owns and operates an open pit iron ore mine in Eveleth, Minnesota, and a processing facility near Forbes, Minnesota. On November 9, 2016, the Commission issued an Order extending an Electric Service Agreement (ESA) between MP and Cliffs. Under the approved ESA, Cliffs will purchase all of its electric service requirements for its United Taconite and North Shore Mining facilities from MP through at least 2026 (Docket No. E015/M-16-534).

According to MP, United Taconite and MP have historically worked in collaboration to operate and maintain the bulk electric transmission system that interconnects to the ETCO Substation that is located on United Taconite property near Forbes in northern Minnesota. MP and United Taconite each own transmission assets within the ETCO Substation. Recognizing the mutual benefit of MP's ownership of the Transmission Assets identified in Schedule 2.1.1 of the Agreement, United Taconite has agreed to sell its ownership interests in the Transmission Assets.²

¹ A map showing the road that allows MP to access the Transmission Assets is included as Attachment A of MP's petition.

² As The Agreement is noted in Mr. Michael A. Perala's Direct Testimony (Vol. III, pages 20-24) in MP's current rate case (Docket No. E015/GR-16-664).

III. DEPARTMENT ANALYSIS

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 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 thereto the commission shall investigate, with or without public hearing, and in case of a public hearing, upon such notice as the commission may require, and if it shall find 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 Minnesota of Department Commerce, Division of Energy Resources (Department) considers the proposed purchase of transmission facilities from United Taconite to MP to fall under the purview of the Commission. Specifically, since the Transmission Assets are greater than \$100,000 in value, the Agreement is subject to approval 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 MP's purchase of transmission facilities from United Taconite at net book value is consistent with the public interest. The Department discusses this issue further below.

B. FILING REQUIREMENTS

The Department notes that Minnesota Rule 7825.1600, DEFINITIONS FOR APPROVAL TO ACQUIRE PROPERTY, simply provides definitions related to the acquisition of property.

Minnesota Rule 7825.1700, PROCEDURE FOR APPROVAL TO ACQUIRE PROPERTY
A public utility, prior to entering into a transaction, shall petition for and receive from the commission by formal written order approval for such transaction. A petition for approval of capital structure (parts 7825.1000 to 7825.1500) shall be filed concurrently with the petition for approval of transfer, merger, or

consolidation if consideration for such a transaction is a security or securities as defined in part [7825.1000](#). The commission may require an independent valuation of the property involved in the transaction.

Minnesota Rule 7825.1800 FILING REQUIREMENTS FOR PETITIONS TO ACQUIRE PROPERTY

Petitions for approval to acquire property shall contain one original and three copies of the following information, either in the petition or as exhibits attached thereto:

- 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 7825.1800, subparts B, C and D above specifically address the issue of transfer of property. MP has provided the required information for Minnesota Rule 7825.1800 subparts B, C and D in its filing.

MP discussed on page 7 of its petition that it believes that Minn. Rules 7825.1400 and 7825.1800 are primarily designed to collect information pertinent to capital structure filings and for the purpose of investigating the issuance of securities. MP noted that these Rules have

no direct relevance in ascertaining the reasonableness of property purchases such as the Transmission Assets that are the subject of this petition. MP has provided the cost, depreciation and price information referenced in the Rules in Exhibits A and B of MP's petition. MP requested that, to the extent the information requirements of Minnesota Rules 7825.1400 and .1800 apply to this Docket, MP seeks a variance since those requirements are not relevant to MP's petition.

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.

According to MP, the public interest will not be adversely affected and no other applicable law or statute be violated; a variance is therefore justified.

The Department agrees with MP that the information required by Minnesota Rule 7825.1400 relates to capital structure filings and is not applicable to the current petition. Furthermore, the Department concludes that enforcement of the rule would impose an excessive burden in relation to the usefulness of the information. The Department agrees that granting a variance would not adversely affect the public interest. Lastly, the Department is unaware of any legal standards that would be violated if the variance were granted. As a result, the Department recommends the Commission grant MP a waiver, if needed, regarding the filing requirements under Minnesota Rule 7825.1400.

The Department does not agree with MP that the information required by Minnesota Rule 7825.1800, which relates to petitions where property is being acquired, merged or transferred as discussed above, should be granted a variance. The Department recommends that the Commission not grant MP a variance to Minnesota Rule 7825.1800 for the purposes of this petition.³

C. OTHER REQUIRED REGULATORY APPROVALS

On August 25, 2017, MP filed with the Federal Energy Regulatory Commission (FERC) in Docket No. EC17-165-000 a request for approval of a transmission asset purchase under Section 203 of the Federal Power Act.⁴ The Company's filing with FERC appears to be similar to its filing with

³ See Commission's October 30, 2009 Order in Docket No. E015/PA-09-758, where this same issue was addressed, and the Commission denied the variance for Minnesota Rule 7825.1800 regarding a transmission asset exchange.

the Commission and no unusual items were noted by the Department. Comments were due to the FERC by September 15, 2017 and no parties filed any comments. Via an email from the Company, the Department was informed that in addition to the Commission and FERC filings and approvals, no other regulatory approvals are needed. Based on the Department's review, it appears that MP has made all necessary filings to state and federal agencies.

D. ANALYSIS OF THE PURCHASE OF TRANSMISSION FACILITIES AGREEMENT AND RELATED SUBSTATION ACCESS EASEMENT BETWEEN UNITED TACONITE AND MP

1. Standard for Review of the Purchase of Transmission Facilities

The Company stated on page 6 of its petition that Minn. Stat. §216B.50 governs the Commission's review of MP's Petition (Purchase of Transmission Facilities and related Substation Access Agreement). According to the Company on pages 6-7 of its petition, if the Commission finds that the transaction is "consistent with the public interest," it must approve the Petition. MP noted that in prior cases, the Commission established that this standard "does not require an affirmative finding of public benefit, just a finding that the transaction is compatible with the public interest."⁴ MP concluded that the purchase of United Taconite's Transmission Assets and the Substation Access Easement meets the Commission's standard under Minn. Stat. §216B.50.

The Department agrees with MP that the proposed transaction is governed by Minn. Stat. §216B.50 and considers the primary issue to be whether the purchase of transmission facilities at net book value and the related Substation Access Agreement between United Taconite and MP are consistent with the public interest. When the Department analyzes whether a proposed transaction is consistent with the public interest, the more benefits the Company is able to show, the easier it is for the Department to support approval of a given transaction. There have also been many proceedings where the Department has required the showing of benefits before rate recovery is allowed. As a result, we expect utilities to show that their proposal is clearly in the public interest. The issue of public interest will be analyzed and discussed below.

2. Analysis of the Agreement

According to the Company on page 5 of its petition, MP and United Taconite have historically worked in collaboration to operate and maintain the bulk electric transmission system that interconnects to the ETCO Substation. MP and United Taconite LLC each owns transmission

⁴ *In the Matter of the Proposed Merger of Minnegasco, Inc. With and Into ARKLA, Inc. Order Approving Merger, Docket No. G008/90-604 (1990).*

assets within the ETCO Substation. According to MP, in order to better operate and maintain these transmission assets, United Taconite has agreed to sell its ownership interests in the identified Transmission Assets (see Schedule 2.1.1 of the Agreement) and MP has agreed to purchase the ownership interests of the Transmission Assets, for \$422,921.

The Department notes that the final valuation of transmission assets will be determined on the effective date of the sale (see Article 5.1. of the Agreement). MP noted that the Agreement (attached as Exhibit A to MP's petition) is a straightforward commercial agreement and related bills of sale that will be executed at closing. Specifically, United Taconite will sell all rights, title and interest in and to the Transmission Assets arising from, in connection with, necessary or used in conjunction with the operation, maintenance, repair, upgrade, or replacement of the Transmission Assets including: all major equipment, jumpers, bus conductor, power wiring, foundations, bus supports, structural steel, insulators, battery systems, relaying, and associate DC (direct current) control systems except as specified in Schedule 2.1.1 of the Agreement.

According to MP, United Taconite will grant access to and egress from the ETCO Substation through a Substation Access Easement. The Substation Access Easement formally allows MP the right to access, operate and maintain equipment at the ETCO Substation that is located on United Taconite property.

As further discussed below, the Department agrees that the Agreement and Substation Access Easement would likely facilitate operation and maintenance of the Transmission Assets. Therefore, the Department concludes that the Agreement and Substation Access Easement are reasonable.

3. Accounting and Ratemaking for Transmission Assets to be Purchased

MP noted on page 7 of its petition that the purchase of the transmission assets is at depreciated book value (i.e., net book value). MP included the estimated accounting entries to record the purchase of assets in its Exhibit B. MP indicated on page 3 of its petition that upon Commission approval, MP would file final accounting entries within 60 days of closing.

The Department reviewed the proposed journal entries included in MP's Exhibit B. The Department notes that MP has included the original installed cost of the transmission assets of \$447,902, less the related accumulated depreciation of \$24,981, which results in a net book value of \$422,921 which is the estimated purchase price. The Department considers the purchase of transmission assets by MP from United Taconite at net book value to be reasonable and consistent with public interest according to past Commission decisions. The Department is however somewhat surprised that the accumulated depreciation amount is only \$24,981. As a result, the Department requests that MP provide additional support in its reply comments for

the net book value of \$422,921 and specifically support for the accumulated depreciation of \$24,921. The Department recommends that the Commission require final journal entries with support for final purchase price to be submitted by MP as a compliance filing 60 days after the completion of the sale, as offered by MP.

MP did not address in its petition if these Transmission Assets were included in their current pending rate case. As a result, the Department requests MP address in reply comments the revenue requirement impact in the current rate case and why it is reasonable, as a result of the purchase of these Transmission Assets.

4. Public Interest Standard

According to the Company the proposed Agreement is in the public interest and approval should be granted. MP noted that the purchase of the Transmission Assets would be at Original Installed Cost Depreciated (in other words, at net book value. MP also noted that Cliffs/United Taconite owns certain transmission assets that are part of MP's transmission system. According to MP, the large loads of MP's large power customers often require Cliffs'/United Taconite's main substations to be a part of MP's network transmission system, with power both going to serve the customer load at the site and also flowing through the substation to other parts of MP's transmission grid. Having both ownership and control of these transmission assets would allow better coordination, planning, and efficiency of operation, maintenance, construction, and necessary upgrading of MP's overall transmission system than can be achieved if parts of the system are owned and operated by different parties. Additionally, MP noted that, as compliance with North American Electric Reliability Corporation (NERC) requirements becomes more complex, it is mutually beneficial for MP, an experienced transmission owner and utility, to assume responsibility to operate, maintain and report on the bulk electric system and relieve United Taconite of that responsibility.

The Department concurs with MP's assessment of the public interest benefits of the Agreement and Substation Access Easement, and therefore recommends that the Commission approve MP's Transmission Asset purchase from United Taconite, subject to MP providing additional support in its reply comment for the net book value of \$422,921 and specifically support for the accumulated depreciation of \$24,921.

III. CONCLUSIONS AND RECOMMENDATIONS

Since the Transmission Assets are greater than \$100,000 in value, the Department concludes that the Agreement and Substation Access Easement is subject to approval of the Commission under Minn. Stat. § 216B.50 and corresponding Minn. Rules Part 7825.1600 and 1800.

The Department recommends the Commission grant MP a waiver, if needed, regarding the filing requirements under Minnesota Rule 7825.1400. However, the Department does not agree with MP that the information required by Minnesota Rule 7825.1800, which relates to petitions where property is being acquired, merged or transferred as discussed above, does not apply to the transaction. Therefore, the Department recommends that the Commission deny MP's requested variance to Minnesota Rule 7825.1800.⁵

The Department concludes that it appears that MP has made all necessary filings to state and federal agencies.

The Department concludes that the Transmission Asset and Substation Access Agreement are reasonable and in the public interest.

The Department requests that MP provide additional support in its reply comments for the net book value of \$422,921 and specifically support for the accumulated depreciation of \$24,921. The Department also requests MP address in reply comments the revenue requirement impact in the current rate case and why it is reasonable, as a result of the purchase of United Taconite Transmission Assets.

The Department recommends that the Commission approve MP's proposed transmission asset purchase from United Taconite, subject to MP providing additional support in its reply comment for the net book value of \$422,921 and specifically support for the accumulated depreciation of only \$24,921. Additionally, the approval should be subject to MP addressing in reply comments the revenue requirement impact in the current rate case and why it is reasonable, as a result of the purchase of United Taconite Transmission Assets.

Finally, the Department recommends that the Commission require final journal entries with support for the final purchase price to be submitted by MP as a compliance filing 60 days after the completion of the sale, as offered by MP.

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⁵ See Commission's October 30, 2009 Order in Docket No. E015/PA-09-758, where this same issue was addressed, and the Commission denied the variance to Minnesota Rule 7825.1800 regarding a transmission asset exchange.

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, 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 Nos. **E015/PA-17-400**

Dated this **18th** day of **September, 2017**.

/s/Linda Chavez

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