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December 20, 2013

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E015/AI-13-966

Dear Dr. Haar:

Attached are the Comments of the Division of Energy Resources of the Minnesota Department of Commerce (Department) on Minnesota Power's petition in the following matter:

Minnesota Power's Petition for Approval of An Affiliated Interest Agreement with Superior Water, Light and Power Company.

The petition was filed on October 21, 2013 by:

Christopher D. Anderson  
Associate General Counsel  
Minnesota Power  
30 West Superior Street  
Duluth, MN 55802

The Department recommends **approval, with conditions**, and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ CRAIG ADDONIZIO  
Financial Analyst

CA/lt  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE  
DIVISION OF ENERGY RESOURCES

DOCKET NO. E015/AI-13-966

**I. SUMMARY OF FILING AND BACKGROUND**

On October 21, 2013, Minnesota Power (MP or the Company), an operating division of ALLETE, Inc. (ALLETE), submitted a petition for approval of an affiliated interest agreement with Superior Water, Light and Power Company (SWLP), a wholly owned subsidiary of ALLETE. The affiliated interest agreement for which the Company is seeking approval is a wholesale electric service agreement (ESA) which governs the provision of wholesale electric service to SWLP under ALLETE's wholesale tariff on file with the Federal Energy Regulatory Commission (FERC).

Additionally, the Company requests permission to notify the Minnesota Public Utilities Commission (the Commission) of future modifications to its ESA with SWLP via compliance filings, rather than repeatedly initiating new dockets, provided that the modifications meet certain requirements, described below.

**II. DETAILS OF MP'S PROPOSAL**

**A. ELECTRIC SERVICE AGREEMENT WITH SWLP**

MP's ESA with SWLP is one of seventeen largely identical wholesale ESAs MP has with its wholesale customers, all of which are subject to the jurisdiction of the FERC. The FERC granted ALLETE authority to charge market-based rates, and the Company negotiates its wholesale rates directly with its wholesale customers. On page 1 of Attachment 1 to its petition, MP states that all seventeen of its wholesale ESAs have been modified to include Production Tax Credits (PTCs).

MP sought and received Commission approval of a wholesale ESA with SWLP in Docket No. E015/AI-08-1297. The Company later made several revisions to its ESA with SWLP, and sought and received Commission approval of the modified ESA in Docket No. E015/AI-11-978 (the 2011 Docket). As stated in the Company's petition in the instant Docket, the ESA approved in the 2011 Docket has recently been modified to reflect the PTCs being generated by the Company's wind generation assets in North Dakota, and the Company is now seeking approval of an updated ESA with SWLP.

*B. COMPLIANCE FILING PROCESS*

The Company states in Attachment 1 to its petition that all of its wholesale ESAs, including its ESA with SWLP, will require various updates in the future. Rather than initiating a new affiliated interest docket following each update, MP requests permission to notify the Commission of modifications to its ESA with SWLP via compliance filings when those modifications are made uniformly across all seventeen of the Company's wholesale ESAs. When the modifications are unique to SWLP's ESA, MP will initiate a new affiliated interest docket and file a new petition seeking Commission approval.

**III. DEPARTMENT ANALYSIS**

*A. STATUTORY REQUIREMENTS*

Minn. Stat. §216B.48 Subd. 3 provides:

No contract or agreement, including any general or continuing agreement, providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right or thing, other than those above enumerated, made or entered into after January 1, 1975 between a public utility and any affiliated interest... is valid or effective unless and until the contract or arrangement has received the written approval of the commission.

The Department considers the ESA with SWLP to fall under the purview of Minn. Stat. §216B.48. Minn. Stat. §216B.48 provides two tests (the reasonableness and public-interest tests) for the Commission to apply to affiliated-interest contracts:

The commission shall approve the contact or arrangement... only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest. . . The burden of proof to establish the reasonableness of the contract or arrangement is on the public utility.

The burden of proof to establish reasonableness of the MP's ESA with SWLP falls on the Company, and the Commission shall approve it only if it is reasonable and consistent with the public interest.

*B. FILING REQUIREMENTS*

In its Order in Docket No. E,G-999/CI-98-651, the Commission provided that, within 30 days of executing a contract or arrangement with an affiliate, a utility must make a miscellaneous filing that satisfies the requirements of Minn. R. 7825.2200, subd. B. by including the following information:

1. A heading that identifies the type of transaction.
2. The identity of the affiliated parties in the first sentence.
3. A general description of the nature and terms of the agreement, including the effective date of the contract or arrangement and the length of the contract or arrangement.
4. A list and the past history of all current contracts or agreements between the utility and the affiliate, the consideration received by the affiliate for such contracts or agreements, and a summary of the relevant cost records related to these ongoing transactions.
5. A descriptive summary of the pertinent facts and reasons why such contract or agreement is in the public interest.
6. The amount of compensation and, if applicable, a brief description of the cost allocation methodology or market information used to determine cost or price.
7. If the service or good acquired from an affiliate is competitively available, an explanation must be included stating whether competitive bidding was used and, if it was used, a copy of the proposal or a summary must be included. If it is not competitively bid, an explanation must be included stating why bidding was not used.
8. If the arrangement is in writing, a copy of that document must be attached.

9. Whether, as a result of the affiliate transaction, the affiliate would have access to customer information, such as customer name, address, usage or demographic information.
10. The filing must be verified.

In its petition, MP provided applicable information satisfying all of the above-mentioned requirements. The ESA with SWLP was executed on July 15, 2013, and while MP's petition was not filed within 30 days of executing the SWLP ESA, the Department notes that MP initially filed its petition as a compliance filing in the 2011 Docket on July 31, 2013, within the required 30 days. After a brief initial review, the Department requested that MP refile the compliance filing in a new docket. Thus, the Department considers MP to have met the 30-day filing requirement.

The Department discusses several of the filing requirements below.

#### *1. Public Interest*

With respect to fifth filing requirement listed above, MP stated in its petition that there has been no change from the 2011 Docket, in which the Company stated that its ESA with SWLP is in the public interest because

...it allows for Minnesota Power to continue an all-requirements wholesale electric service agreement with a municipal customer under FERC-jurisdictional rates. The extended term of the agreement assists Minnesota Power's generation supply planning and overall resource planning. Finally, it makes the SWLP Electric Service Agreement uniform with Minnesota Power's other wholesale Electric Service Agreements.<sup>1</sup>

#### *2. Amount of Compensation*

With respect to the sixth filing requirement listed above, MP stated in its petition that it has made sales to SWLP of \$34.6 million and \$35.9 million in 2011 and 2012, respectively. As noted above, the wholesale rates charged by MP to SWLP are subject to FERC's jurisdiction, and the amount of compensation received by MP is determined by a cost-based formula rate calculation methodology.

#### *3. Competitive Bidding*

The seventh filing requirement listed above applies only when a good or service is being acquired from an affiliate. Here, the good or service is being provided to an affiliate, and thus the competitive bidding requirement does not apply.

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<sup>1</sup> MP's petition in Docket No. E015/AI-11-978, page 5.

#### *4. Demographic Information*

With respect to ninth filing requirement listed above, MP stated in its petition that there has been no change from the 2011 Docket. In the 2011 Docket, MP stated that SWLP has not and will not have any access to MP's customer information or demographic information as a result of its ESA.

#### *C. ANALYSIS OF THE SWLP ESA*

The Department's primary concern with respect to affiliated interest agreements is that ratepayers may be forced to bear unreasonable costs resulting from preferential treatment afforded to an affiliate by the utility. For example, when a utility receives a good or service from an affiliate that is used to serve the utility's retail load, the expense incurred by the utility pursuant to that transaction is included in rates in a rate case. Therefore, such agreements warrant careful scrutiny to ensure that any expense incurred by the utility pursuant to the agreement is reasonable, and that the good or service being acquired is not available from a different source at a lower cost. As noted above, SWLP ESA is largely identical to MP's other wholesale ESAs with non-affiliates which were negotiated at arm's length pursuant to MP's wholesale tariff. Therefore, the Department concludes that SWLP is not receiving any preferential treatment which may pose a risk to MP's retail ratepayers.

The Department concludes that the SWLP ESA is consistent with the public interest.

#### *D. ANALYSIS OF THE PROPOSED COMPLIANCE FILING PROCESS*

The Department generally supports the intent behind MP's proposed compliance filing, to eliminate unnecessary regulatory review of minor modifications that will have no material impact on MP's retail ratepayers. The Department's analysis of MP's proposed compliance filing process focuses on whether the proposed process would in any way hinder the ability of the Department and the Commission to monitor MP's relationship with its affiliate and protect MP's retail ratepayers from harm.

MP's proposed compliance filing process would be used only for changes that apply to all of MP's wholesale ESAs. Thus, when such changes occur, the Department and the Commission can be reasonably sure they will not result in preferential or discriminatory treatment for SWLP. Because of this, the Department concludes that it is likely that MP's retail ratepayers would be reasonably protected under the proposed compliance filing process.

However, the Department cannot anticipate all future changes to MP's SWLP ESA and the impacts any such changes may have on MP's retail ratepayers, and the Department is concerned about potential harmful effects if the scope of the compliance filing process is set too broadly. The changes which prompted MP to file its petition in this Docket are minor modifications to MP's wholesale formula rate methodology, do not substantially change the nature of the SWLP ESA, and are being applied to all of MP's wholesale ESAs. The Department concludes that

similarly minor modifications in the future that are applied to all of MP's wholesale ESAs can be reviewed via the proposed compliance filing process without exposing MP's retail ratepayers to harm. However, the Department is concerned that there may be modifications which, even if applied to all of MP's wholesale ESAs, could potentially pose a risk to MP's retail ratepayers. The Department would like to ensure that any interested party has the ability to easily initiate a full review of any modifications filed by the Company.

The Department concludes that the proposed compliance filing process is reasonable with the following conditions:

1. Each compliance filing must contain:
  - a. a detailed description of the modifications to the ESA which prompted the compliance filing, and
  - b. confirmation that the modifications will apply to all of MP's wholesale ESAs and that SWLP is not receiving any preferential or discriminatory treatment.
2. Within 30 days of submission of the compliance filing, any interested party may file comments regarding the compliance filing to initiate a full review of MP's agreement with SWLP. If no comments are filed, the modifications would be deemed approved by the Commission.

The Department agrees with MP that the Company should file new petitions in new dockets to request approval its SWLP ESA following changes that are unique to the SWLP ESA. While MP's current ESA with SWLP is largely identical to MP's other wholesale ESAs, ALLETE's FERC tariff states that rates for sales under the tariff shall be as negotiated by the parties. Thus it is possible in the future that SWLP may negotiate an ESA which differs materially from MP's other wholesale ESAs. Should such a situation occur, further regulatory scrutiny would be warranted to ensure that SWLP is not receiving preferential treatment in a way that harms MP's retail ratepayers.

#### *E. DEFINITION OF "NEW AGREEMENT"*

The Department has one additional concern regarding the proposed compliance filing process. As noted above, the Commission's Order in Docket No. E,G-999/CI-98-651 provided that, "Within 30 days of executing a contract or arrangement with an affiliate, a utility must make a miscellaneous filing that satisfies the requirements of Minn. R. 7825.2200, subd. B...." Although the only changes to the SWLP ESA proposed in this Docket are minor, the Department is concerned that the modified ESA, which has a new execution date and new terms, constitutes a new agreement that requires Commission approval of a miscellaneous filing under Minnesota Statute 216B.48.

As described above, the Department concludes that the proposed compliance filing process adequately protects MP's retail ratepayers, but the Department does not wish to set a precedent which would extend outside of this Docket limiting the need for utilities to request approval of affiliated interest agreements. Therefore, if the Commission approves the proposed compliance filing process, the Department recommends that the Commission clarify that its approval does not represent a precedent upon which MP or any other party can rely in future dockets.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

After review, the Department concludes that MP's SWLP ESA and the proposed compliance filing process for future changes to the SWLP ESA are reasonable and consistent with the public interest. The Department recommends that the Commission:

1. Approve MP's proposed ESA with SWLP;
2. Approve MP's proposed compliance filing process, subject to the following conditions:
  - a. Each compliance filing must contain:
    - i. a detailed description of the modifications to the ESA which prompted the compliance filing, and
    - ii. confirmation that the modifications will apply to all of MP's wholesale ESAs and that SWLP is not receiving any preferential or discriminatory treatment.
  - b. Within 30 days of submission of a compliance filing, any interested party may file comments on the compliance filing to initiate a full review of MP's agreement with SWLP. If no comments are filed, the modifications are deemed approved by the Commission.
3. Clarify that the Commission's approval of MP's proposed compliance filing process applies only in this Docket, and does not set a precedent on which MP or other utilities can rely in future Dockets.

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