

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
David C. Boyd  
J. Dennis O'Brien  
Phyllis A. Reha  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Interstate Power and Light Company's Petition for Approval of a Common Facilities Capacity Agreement with its Affiliate Franklin County Wind, LLC

ISSUE DATE: July 24, 2012

DOCKET NO. E,G-001/AI-12-32;

DOCKET NO. E,G-001/AI-12-187;

In the Matter of Interstate Power and Light Company's Petition for Approval of a Land Lease Agreement with its Affiliate, Franklin County Wind, LLC

DOCKET NO. E,G-001/AI-12-192;

DOCKET NO. E,G-001/AI-12-792

In the Matter of Interstate Power and Light Company's Petition for Approval of a Local Balancing Authority Agreement with its Affiliate, Franklin County Wind, LLC

ORDER REQUIRING FILINGS

In the Matter of Interstate Power and Light Company's Transfer of Land Easements, Wind Rights, and Rights to Purchase Wind Turbines, to its Affiliate, Franklin County Wind, LLC

**PROCEDURAL HISTORY**

On June 29, 2011, Interstate Power and Light Company (IPL) transferred land easements, wind rights, and turbine purchase rights to its affiliate, Franklin County Wind, LLC. The affiliate plans to construct a windfarm on the transferred land, which is immediately adjacent to a windfarm owned by IPL. IPL did not seek Commission approval of the transfer.

On January 6, 2012, IPL filed a petition under the affiliated interest statute, Minn. Stat. § 216B.48, for approval of a Common Facilities Capacity Agreement with Franklin County Wind. Under the agreement, the affiliate would purchase from IPL the interconnection capacity necessary to connect a windfarm with the transmission grid.

On March 2, 2012, IPL filed a similar petition for approval of its Land Lease Agreement with Franklin County Wind. The agreement would permit the affiliate to use IPL's land as a staging area for windfarm construction.

On March 7, 2012, IPL filed a third petition, for approval of its Local Balancing Authority Agreement with Franklin County Wind. Under the agreement, Franklin County Wind would permit IPL to meter the windfarm in order to fulfill IPL's obligation to meet reliability requirements in its local balancing authority area.

On April 6, 2012, the Minnesota Department of Commerce, Division of Energy Resources (the Department) filed comments addressing all three petitions. The Department recommended that the Commission deny the petitions without prejudice and require IPL to file the agreements transferring land easements, wind rights, and turbine purchase rights to Franklin County Wind to enable the Commission to evaluate the transactions in context.

On May 2, 2012, the Office of the Attorney General – Antitrust and Utilities Division (the OAG) filed comments addressing all three petitions. The OAG agreed with the Department that Commission approval of the petitions would be premature, and recommended that the Commission require IPL to file the agreements transferring land easements, wind rights, and turbine purchase rights to Franklin County Wind. The OAG also contended that the Commission should consider penalizing IPL, arguing that IPL had repeatedly failed to comply with Minn. Stat. § 216B.48 (concerning the need for Commission approval of certain affiliated interest transactions).

On May 14, 2012, IPL filed reply comments contending that the earlier transfer of land easements, wind rights, and turbine purchase rights was exempt from the need for Commission approval, and that the Commission should approve the pending petitions.

On June 28, 2012, the Commission considered whether to approve the petitions.

## **FINDINGS AND CONCLUSIONS**

### **I. Background and Positions of the Parties**

IPL seeks approval of three related agreements it entered into with its affiliate Franklin County Wind. The agreements concern rights integral to the development of a wind farm in Franklin County, Iowa. The agreements—a common facilities capacity agreement, a land lease agreement, and a local balancing authority agreement—require Commission approval as affiliated interest arrangements under Minnesota Statutes section 216B.48.

The Department and the OAG both filed comments opposing Commission approval of the agreements. They contend that IPL's prior agreements to convey land easements, wind rights, and turbine purchase rights to Franklin County Wind are also subject to Commission approval, and have not yet been presented to the Commission for review. They argue that it would be premature for the Commission to approve the agreements currently under consideration before reviewing the agreements that transferred the land easements, wind rights, and turbine purchase rights. The

Department asserts that IPL has previously failed to make timely affiliated interest filings, and the OAG contends that penalties would be warranted for the failure to seek Commission approval of the land easements, wind rights, and turbine purchase rights agreements.

In its reply comments, IPL disputes that the land easements, wind rights, and turbine purchase rights transfer was subject to Commission review. IPL contends that it complied with its internal affiliate transaction procedure, and did not submit the agreements for approval because the land, wind, and turbine rights were not utility property. According to IPL, “all costs associated with those rights have been borne by IPL’s shareholders and held in FERC account 121—Nonutility Property.”

IPL further argues that the Commission approval of affiliated interest transactions is limited to circumstances necessary for regulatory purposes. In support of its argument, IPL cites a September 14, 1998, Commission order that addressed affiliated interest filings and construed Minn. Stat. § 216B.48.<sup>1</sup> IPL asserts that because there is no regulatory purpose to review the land easements, wind rights, and turbine purchase rights transfer, Commission approval was not required. IPL concedes, however, that the transfer was from a utility to an affiliate.

## **II. Commission Action**

The Commission agrees with the Department and the OAG that it is premature to approve the agreements in these dockets without first examining whether the underlying land, wind, and turbine transfers required Commission approval. The Commission will require IPL to file the agreements transferring the land, wind, and turbine rights in a new docket opened for that purpose, and will take comments from the parties and interested persons concerning the applicability of Minn. Stat. §§ 216B.48 and 216B.50, and the significance of the Commission’s order in Docket No. E,G-999/CI-98-651.

### **ORDER**

1. Interstate Power and Light Company shall file, in docket E,G-001/AI-12-792, the agreements transferring land easements, wind rights, and rights to purchase wind turbines to its affiliate.

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<sup>1</sup> *In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements*, Order Initiating Repeal of Rule, Granting Generic Variance, and Clarifying Internal Operating Procedures, Docket No. E,G-999/CI-98-651 (September 14, 1998).

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary



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