

March 25, 2021

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/PA-20-675

Dear Mr. Seuffert:

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

Petition for Approval of Minnesota Power Land Sales.

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the Petition, with reporting requirements**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ CRAIG ADDONIZIO
Financial Analyst

CA/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce
Division of Energy Resources

Docket No. E015/PA-20-675

I. INTRODUCTION

On August 31, 2020, Minnesota Power (or the Company) filed a petition (Petition) seeking approval from the Minnesota Public Utilities Commission (Commission) to sell property surrounding several reservoirs in its hydroelectric (HE) system, with an estimated value of approximately \$101 million. The Company proposed to credit ratepayers with the net proceeds from the sales to mitigate future rate increases.

On January 15, 2021, the Department filed Comments indicating general support for the Company's proposal, but requesting additional information from Minnesota Power.

On January 25, 2021, Minnesota Power filed Reply Comments addressing the issues raised in the Department's Comments.

II. DEPARTMENT ANALYSIS

In its Comments, the Department requested that Minnesota Power provide additional information related to four specific issues. The Department provides its response to the information provided in the Company Reply Comments below. The Department also discusses an additional reporting requirement regarding a related proceeding at the Federal Energy Regulatory Commission.

A. INITIAL OFFER PRICE FOR CURRENTLY-LEASED LOTS

As described in the Company's Petition,¹ as well as the Department's Comments,² for lots that are currently leased, the Company proposed to offer each lot to its current leaseholder using the lot's current assessed Estimated Market Value (EMV) as the offer price. If a leaseholder initially chooses not to purchase the lot, Minnesota Power will fully honor the lease through its current term, and the leaseholder will have a second chance to purchase the lot when the lease expires. Leaseholders that choose not to purchase their lots by the end of their current lease will be required to sell the structures on their lots, and the purchasers of the structures will be required to also purchase the lot from Minnesota Power.³

¹ Petition at 7.

² Comments at 10.

³ Petition at 7.

In its Comments, the Department stated that its understanding was that the initial offer to the current leaseholder will be presented as a take-it-or-leave-it offer, and that there will be no negotiating.⁴ The Department requested that Minnesota Power explain whether it will consider counteroffers from current leaseholders after the Company offers to sell their lots at the current EMV, or whether those offers will be non-negotiable.

In its Reply Comments, Minnesota Power stated that it will not consider counteroffers from current leaseholders after the Company offers to sell their lots at current EMV, and that if leaseholders delay the purchase of the lot, the delayed purchases will be based on the most current EMV available from the county.⁵

The Department appreciates Minnesota Power's response and concludes that the Company's proposed plan to offer the lots to current leaseholders at the current EMV is reasonable.

B. PROPOSED ACCOUNTING TREATMENT AND JOURNAL ENTRIES

In its Petition, Minnesota Power stated that it would defer all proceeds from the proposed lot sales into a regulatory liability, to be credited to ratepayers in the future.⁶ During its review of Minnesota Power's proposed accounting treatment for land sales, the Department noted that the proposed journal entries provided in the Company's response to Department IR 42 do not involve or create a regulatory liability.⁷ Rather, the journal entries record the gain on sale as income on Minnesota Power's income statement in FERC Account 421.1 Gain on Disposition of Property. The Department requested that Minnesota Power provide in Reply Comments any additional or corrected journal entries that it expects to use to create the regulatory liability referenced in the Petition.

Minnesota Power's Reply Comments did not provide updated journal entries demonstrating how the regulatory liability would be created. However, the Company subsequently provided updated journal entries showing the creation of the regulatory liability as proposed in the Petition.⁸ The Department has reviewed the updated proposed accounting treatment and concludes that it is reasonable.

C. TAX RATE APPLICABLE TO GAINS ON LAND SALES

In its Comments, the Department requested that Minnesota Power clarify whether the gains resulting from these land sales will be taxed at Federal and state corporate income taxes, or at lower capital gains tax rates.⁹

⁴ Comments at 7.

⁵ Reply Comments at 2.

⁶ Petition at 9.

⁷ Comments at 13-14.

⁸ Department Attachment 1.

⁹ Comments at 12.

In Reply Comments, the Company stated that Federal and state corporate income tax rates will apply to land sales, and that business capital gain is taxed at the same rate as ordinary income for companies.¹⁰

Based on the Company's response, the Department concludes that Minnesota Power's proposal to use Federal and state corporate income tax rates to calculate the tax expense to be deducted (among other expenses) from the gross proceeds of the sales in determining the final credit for ratepayers is reasonable.

D. POTENTIAL BENEFITS TO MINNESOTA POWER'S NON-REGULATED AFFILIATES

In its Comments, the Department requested the Minnesota Power explain in Reply Comments whether any of the tax liability generated by the sale of these lands will be used in any way to benefit the Company's nonregulated affiliates, for example by being used to consume nonregulated deferred tax assets or otherwise monetize tax benefits generated by ALLETE Inc.'s nonregulated lines of business.¹¹

In its Reply Comments, Minnesota Power stated that there are no direct or indirect benefits to any non-regulated affiliate from the land sales.¹²

The Department appreciates Minnesota Power's response.

E. TRACKING AND REPORTING REQUIREMENTS

As described on page 12 of its Comments, the Department recommends that the Commission approve Minnesota Power's request to provide annual updates in this Docket on the number of lot sales, the purchase prices, and the amount in the tracker account. In its Petition, the Company also stated that it would include in its annual updates an estimate of the anticipated customer benefits through rate mitigation, similar to what is provided in rider factor filings.¹³ The Department agrees that this information would be useful.

However, as described in its Comments, the Department is concerned that this information may be insufficient to fully review the costs of the Company's lot sales. Therefore, the Department recommends that the Commission also require Minnesota Power to track all additions to (i.e. sales revenue) and deductions from (i.e. expenses) the tracker account at the most granular level possible. For example, costs that are attributable to individual sales, such as title and escrow/settlement fees, should be tracked at the level of individual lot sales. In annual compliance filings, the Company can report on these costs at the aggregate level, but should maintain the data at the sale level such that it can be provided to any party that requests it. Costs which are not directly attributable to individual lot

¹⁰ Reply Comments at 3.

¹¹ Comments at 13-14.

¹² Reply Comments at 3.

¹³ Petition at 10.

sales, such as the expense associated with surveying and platting, should be tracked in sufficient detail for the Commission and the Department to determine whether they are internal costs that are included in base rates, or external costs.

In addition, in its Reply Comments, Minnesota Power noted that it submitted a non-capacity license amendment application to the Federal Energy Regulatory Commission (FERC) on December 22, 2020 to adjust the Project Boundary for specific sections of Island, Fish, and Whiteface Reservoirs.¹⁴ The Company also provided a brief narrative describing other developments related to its FERC application since its initial filing. The Department appreciates this additional information, and recommends that the Commission require the Company to provide timely updates via compliance filings in this Docket as important developments related to its FERC application occur, as well as brief updates on the status of its FERC application in its annual filings.

III. CONCLUSION AND RECOMMENDATIONS

After review, the Department recommends that Commission:

- 1) approve Minnesota Power's Petition;
- 2) require Minnesota Power to provide annual compliance filings that include:
 - a) data regarding lot sale transactions, including:
 - i) the number of offers to current leaseholders made to date as of the time of the compliance filing
 - ii) the number of offers to current leaseholders accepted
 - iii) the number of offers to current leaseholders rejected
 - iv) the number of lots listed on the open real estate market
 - v) the number of lots sold via the open real estate market
 - b) the tracker balance, including:
 - i) all additions to the tracker
 - ii) all deductions from the tracker
 - c) an estimate of anticipated customer benefits
 - d) updates on the status of Minnesota Power's non-capacity license amendment application at the Federal Energy Regulatory Commission;
- 3) require Minnesota Power to provide timely updates to the Commission via compliance filings in this Docket regarding important developments related to its non-capacity license amendment application at the Federal Energy Regulatory Commission;
- 4) require Minnesota Power to track, at the most granular level possible, information on the costs and revenues associated with the lot sales, including:
 - a) for individual lot sales:
 - i) sale price
 - ii) list price (if different from sale price)
 - iii) EMV of land at the time of the sale

¹⁴ Reply Comments at 1.

- iv) EMV of buildings/structures at time of sale
- v) all fees and expenses (e.g. title fees), itemized by type
- vi) whether the lot was sold to the current leaseholder
- b) for costs deducted from the tracker that are not attributable to individual lots sales, sufficient detail to determine whether they are internal costs included in base rates, or external costs.

/ja

**Minnesota Power's Updated Response to Department Information Request 42
 Provided to the Department via Email**

Minnesota Power

Sale of Hydro Land to Interested Parties

Summary of Entries

Entry #1 - To record removal of the original installed cost for assets sold by Minnesota Power to Interested Parties

Debit Account 102 Electric Plant Purchased or Sold	-	
Credit Account 101 Electric Plant In-Service - Owned Account 3300		-

Entry #2 - To record the removal of the accumulated depreciation for assets sold by Minnesota Power to Interested Parties

No Depreciation on Land. Entry Not Needed.

Debit Account 108 Electric Depreciation Reserve Account 3300	-	
Credit Account 102 Electric Plant Purchased or Sold		-

Entry #3 - To record cash received for assets sold by Minnesota Power to Interested Parties

Debit Account 131 Cash	-	
Credit Account 102 Electric Plant Purchased or Sold		-

Entry #4 - To record estimated costs incurred by Minnesota Power related to assets sold by Minnesota Power to Interested Parties

Debit Account 102 Electric Plant Purchased or Sold	-	
Credit Account 131 Cash		-

Entry #5A - To record gain on sale of assets by Minnesota Power to Interested Parties

A gain will be recorded if the cash received is greater than the original installed cost + costs incurred

Debit Account 102 Electric Plant Purchased or Sold	-	
Credit Account 421.1 Gain on Disposition of Property		-

Entry #6 – To record the tax impacts on sale of assets by Minnesota Power to Interested Parties

Debit Account 409 Provision for Current Income Taxes	-	
Debit Account 410.1 Provision for Deferred Income Taxes	-	
Credit Account 190 Accumulated Deferred Income Taxes		-
Credit Account 236 Current Tax Payable		-

Entry #7A – To record gain on disposition of property to a regulated liability on sale of assets by Minnesota Power to Interested Parties

Debit Account 421.1 Gain on Disposition of Property	-	
Credit Account 254 Regulatory Liability		-

Entry #7B – To record the tax impacts of recording the gain on disposition of property to a regulated liability on sale of assets by Minnesota Power to Interested Parties

Debit Account 236 Current Tax Payable	-	
Credit Account 409 Provision for Current Income Taxes		-
Credit Account 410.1 Provision for Deferred Income Taxes		-

CERTIFICATE OF SERVICE

I, Sharon Ferguson, 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
Response Comments**

Docket No. E015/PA-20-675

Dated this 25th day of March 2021

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-675_PA-20-675
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_20-675_PA-20-675
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	Yes	OFF_SL_20-675_PA-20-675
Jennifer	Peterson	jjpeterson@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_20-675_PA-20-675
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-675_PA-20-675
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-675_PA-20-675