Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: December 4, 2014 ..... **Agenda Item #12

Companies: Interstate Power and Light Company ("IPL" or "Interstate") and Southern Minnesota Electrical Coop (SMEC), together (the "Joint Petitioners")

Docket Nos. E-001, E-115, E-140, E-105, E-139, E-124, E-126, E-145, E-132, E-114, E-6521, E-142, E-135/PA-14-322

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

Issues: Should the Commission compel IPL and SMEC to respond to MCC's information requests (IRs) Numbers 14 through 42? Alternatively, should the Commission authorize IPL and SMEC to either not respond to MCC or limit their response to ten IRs of MCC's choosing?

If IPL and SMEC are required to respond to MCC, should the deadline for IPL and SMEC to respond be extended to December 2nd?

Should the Commission allow parties fourteen days to respond to new issues raised in reply comments currently scheduled for December 8th?

Should the Commission designate a lead Commissioner, pursuant to Minn. Stat. § 216A.03, subd. 9, to handle any future disputes regarding discovery and record development?

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Relevant Documents

Minnesota Chamber of Commerce (MCC) – Information Request Nos. 14-42 ..... Nov. 17, 2014[1]
IPL & SMEC – Revised Objection to Late Information Requests ..... Nov. 18, 2014
MCC - Response ..... Nov. 20, 2014
Minnesota Chamber of Commerce (MCC) – Information Request Nos. 43-58 ..... Nov. 21, 2014

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[1] Information request dated Nov. 14, 2014 and filed in eDockets on Nov. 17, 2014.

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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November 25, 2014

Statement of the Issues

- Should the Commission compel IPL and SMEC to respond to MCC's information requests (IRs) Numbers 14 through 42? Alternatively, should the Commission authorize IPL and SMEC to either not respond to MCC or limit their response to ten IRs of MCC's choosing?

- If IPL and SMEC are required to respond to MCC, should the deadline for IPL and SMEC to respond be extended to December 2nd?

- Should the Commission allow parties fourteen days to respond to new issues raised in reply comments currently scheduled for December 8th?

- Should the Commission designate a lead Commissioner, pursuant to Minn. Stat. § 216A.03, subd. 9, to handle any future disputes regarding discovery and record development?

Background

On April 15, 2014, Interstate Power and SMEC filed a petition requesting approval of the sale of IPL's Minnesota electric distribution system and assets, and transfer of IPL's service rights and obligations in Minnesota to SMEC (the Transaction).

On April 22, 2014, the Commission issued a Notice of Schedule for Filing Procedural Comments. The OAG, MMUA, the Department and IPL/SMEC filed their comments in May.

On June 30, 2014, the Commission issued its Order Requiring Additional Record Development. Interstate and SMEC filed responses to the questions from the Commission and interested parties in September. The Department, the OAG, and the Minnesota Municipal Utilities Association each filed comments on the responses to the Petitioners' responses to questions in early October.

On October 10, 2014, the Commission issued a Notice of Additional Comment Period. IPL/SMEC, the Department and OAG filed their initial comments on November 10, 2014.

On November 17, 2014, MCC filed information requests (IRs # 14 - 42). On November 18, IPL/SMEC filed their objection to the IRs. On November 20, MCC filed its response. On November 21, MCC filed additional information requests (IRs # 43 - 58).

On November 18, 2014, the Commission issued its Order Directing Public Hearings to be Held. (The scheduling conference for these hearings will be held on November 26 by telephone.)

Minnesota Chamber of Commerce – Information Requests

On November 14, 2014,[2] the Minnesota Chamber of Commerce (MCC) asked IPL and SMEC to respond by November 28, 2014 to twenty-nine information requests (IRs # 14 - 42). The requested information covers a range of topics related to the rates SMEC plans to charge in the future compared to IPL's current rates, SMEC's arrangements with IPL for its wholesale power supply, and various accounting and future governance issues related to the proposed transaction.

Since then, on November 21, MCC submitted an additional sixteen information requests (IRs # 43 - 58).

IPL & SMEC - Revised Objection to Late Information Requests

On November 18, 2014, IPL and SMEC submitted their objection to MCC's information requests. IPL and SMEC believe MCC's request is untimely and burdensome. In the event, the Commission requires IPL and SMEC to respond to MCC's discovery, IPL and SMEC asked the Commission to limit MCC to ten of the IRs of its choice and to extend the deadline for responding to December 2nd. IPL and SMEC also asked that all parties be allowed to respond to any new issues raised by MCC in its reply comments.

Minnesota Chamber of Commerce – Response to Objection

On November 20, 2014, MCC submitted its response. MCC believes the timing problems cannot be helped and are due mainly to IPL and SMEC and the complexity of the proposed transaction. MCC does not believe its request for information is late filed. MCC does not believe the Commission's orders and notices specifying time periods for discovery and comment were meant to limit development of the record. Even if they were meant to set limits, MCC does not believe that would be appropriate because of the issues that need to be explored and addressed in this case.[3] MCC does not believe the number of its IRs is burdensome considering the magnitude of the issues in this proceeding and noted there were hundreds of IRs in IPL's last rate case. MCC stated that it has not been continuously active in this proceeding because of resource constraints.

With respect to IPL and SMEC's alternative proposal, MCC objects to any limit on the number of IRs. MCC does not object to extending the deadline to December 2nd for IPL and SMEC's response and does not object to parties being allowed to file responses to the December 8th reply comments.

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[2] Information request dated Nov. 14, 2014 and filed in eDockets on Nov. 17, 2014.

[3] According to MCC, "this proceeding, at its core, is really about three issues: 1) a substantial rate increase; 2) the sale or transfer of all IPL assets used and regulated for the benefit of IPL ratepayers; and 3) a loss of IPL ratepayers' right to participate in front of the Public Utilities Commission ("Commission") and relinquishment of jurisdiction by the Commission." [MCC, Response, p. 1]

Staff Comment

MCC's information requests are part of the record. By the time this comes before the Commission at the December 4, 2014 agenda meeting, IPL/SMEC may have responded to some of MCC's IRs or they may have completely resolved their dispute.

In the event that they have not reached agreement and if the Commission believes it would be helpful to have IPL and SMEC provide information in response to MCC's questions, the Commission should require IPL and SMEC to respond. It is unclear to staff whether having this information available would decrease or narrow the number of disputed issues and help parties avoid a contested case. It could increase the number of disputed issues and make a contested case process unavoidable.

Staff does not believe there is any dispute regarding extending the date to December 2 if the Commission requires IPL and SMEC to respond to MCC's information requests (IRs # 14 - 42). Staff also does not believe there is any dispute regarding response comments. Given that the public hearings may not be held until January, staff does not believe the additional time needed for this round of discovery or reply comments will delay this process. Nevertheless, the Commission may want to clarify that its June 30, 2014 Order Requiring Additional Record Development, should be interpreted to be a delegation of authority to the Commission's Executive Secretary to establish and vary comment periods for the duration this proceeding.

The Commission may also want designate a lead Commissioner, pursuant to Minn. Stat. § 216A.03, subd. 9,[6] for this proceeding if it anticipates additional disputes over discovery, record development, etc. This dispute over discovery and process appears to be the kind of situation that a designated lead Commissioner could address, perhaps more expeditiously than the whole Commission.

[6] Minn. Stat. § 216A.03, subd. 9. Lead commissioner; designation, powers, duties. The commission may designate a commissioner to be the lead commissioner for a docket, a type of docket, or for a particular subject area. The commission shall allow interested persons to be heard on a proposed designation prior to making the designation. The lead commissioner is authorized to exercise the commission's authority to develop an evidentiary record for a proceeding, including holding hearings and requesting written or oral comments. At the request of the commission, the lead commissioner shall provide the commission and the service list for the proceeding with a written summary of the evidentiary record developed by the lead commissioner for the case, including any recommendations of the commissioner. Any findings of fact, conclusions of law, or recommendations of the lead commissioner are advisory only and are not binding on the commission. The commission may delegate its authority to designate lead commissioners to the chair. Nothing in this subdivision affects a person's opportunity to request a contested case proceeding under chapter 14.

Decision Alternatives

1. Should the Commission compel IPL and SMEC to respond to MCC's information requests (IRs) Numbers 14 through 42?

    a. Yes, or

    b. Yes, but limit the number of IRs to ten of MCC's choosing that IPL and SMEC must respond to, or

    c. No, do not require IPL and SMEC to respond to MCC's IRs (#s 14-42).

2. If IPL and SMEC are required to respond to MCC, should the deadline for IPL and SMEC to respond be extended to December 2nd?

    a. Extend the deadline for IPL and SMEC to respond to MCC's IRs to December 2, 2014, or

    b. Extend the deadline for IPL and SMEC to respond to MCC's IRs to some other date.

3. Should the Commission allow parties fourteen days to respond to new issues raised in reply comments currently scheduled for December 8th?

    a. Allow parties fourteen days to respond to the reply comments currently scheduled to be filed on December 8th. If the December 8th deadline is extended, then fourteen days from the new deadline. or

    b. Take no action with the understanding that the Commission's Executive Secretary will issue a notice requesting response comments. or

    c. Do not allow parties to file response comments.

4. Should the Commission designate a lead Commissioner, pursuant to Minn. Stat. § 216A.03, subd. 9, to handle disputes regarding discovery and record development?

    a. Designate a lead Commissioner to handle disputes regarding discovery and record development. or

    b. Designate a lead Commissioner to handle disputes regarding discovery, record development, and (i) any other tasks as specifically directed by the Commission or (ii) other tasks as specifically authorized under Min. Stat. § 216A.03, subd. 9. or

    c. Do not designate a lead Commissioner.