

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
David C. Boyd  
Nancy Lange  
J. Dennis O'Brien  
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: April 16, 2013

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,G001/AI-12-32  
E,G001/AI-12-187  
E,G001/AI-12-192  
E,G001/AI-12-792  
E,G001/AI-12-1157

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 FURTHER 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

In the Matter of Interstate Power and Light Company's Petition for Approval of an Affiliated Interest Agreement Between Interstate Power and Light Company and Franklin County Wind, LLC

**PROCEDURAL HISTORY**

**I. The Original Transaction and Subsequent Filings**

On June 29, 2011, Interstate Power and Light Company (IPL) signed a Wind Development Assets Purchase and Sale Agreement with its affiliate, Franklin County Wind, LLC. Under the agreement, IPL transferred land easements, wind rights, and turbine purchase rights to Franklin County Wind. The affiliate plans to construct a windfarm on the transferred land, which is immediately adjacent

to a windfarm owned by IPL. IPL did not file the agreement or 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 second petition, this time for approval of a 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 a 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 July 24, 2012, the Commission issued its order finding that it would be premature to evaluate IPL's petitions without considering the underlying transfer of turbine, land, and wind rights. The Commission created Docket No. E,G-001/AI-12-792 and ordered IPL to file in that docket agreements transferring land easements, wind rights, and rights to purchase wind turbines to Franklin County Wind.<sup>1</sup>

On August 27, 2012, IPL filed its Wind Development Assets Purchase and Sale Agreement with Franklin County Wind, stating that the document contained all the agreements it was required to file under the Commission's July 24 Order. IPL maintained its position that Commission approval of the Purchase and Sale Agreement was not required.

## **II. Parties' Comments**

On November 28, 2012, Minnesota Department of Commerce Division of Energy Resources (the Department) filed comments recommending that the Commission deny approval of IPL's pending petitions, without prejudice. The Department recommended that the Commission require IPL to file a complete affiliated interest filing under Minn. Stat. § 216B.48 and a filing under the utility property transfer statute, Minn. Stat. § 216B.50. The Department also recommended that the Commission consider penalizing IPL for noncompliance with Minn. Stat. § 216B.48.

On December 27, 2012, the Office of the Attorney General – Antitrust and Utilities Division (the OAG) filed comments recommending that the Commission require IPL to file for approval of the Purchase and Sale Agreement under Minn. Stat. §§ 216B.48 and 216B.50. The OAG also recommended that the Commission consider penalizing IPL for noncompliance with Minn. Stat. § 216B.48.

On February 6, 2013, IPL filed reply comments. The Company asserted that it had concluded that the Purchase and Sale Agreement was not subject to Commission approval. The Company

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<sup>1</sup> Unless otherwise specified, filings cited in this order appear in Docket No. E,G-001/AI-12-792.

contended that no financial penalty was warranted. IPL renewed its request for approval of the agreements in Docket Nos. E,G001/AI-12-32, E,G001/AI-12-187, and E,G001/AI-12-192.

On March 21, 2013, the matters came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Issues Summary**

The issue before the Commission is whether IPL's Wind Development Assets Purchase and Sale Agreement with its affiliate is subject to Commission approval. The Commission opened Docket No. 12-792 and required IPL to file the agreement so that the Commission could determine whether the agreement was subject to Commission approval. IPL contends that it was not required to seek Commission approval of the agreement.

The Commission will consider whether the Purchase and Sale Agreement is subject to Commission approval under Minnesota Statutes sections 216B.48 or 216B.50. Section 216B.48 provides that agreements between utilities and affiliates require Commission approval. The statute goes on to state that the Commission shall only approve such an agreement "if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest."

Section 216B.50 requires commission authorization prior to sale of "any plant as an operating unit or system" for more than \$100,000. The statute requires that the Commission investigate the proposed transfer and determine if it is consistent with the public interest.

### **II. Positions of the Parties**

Under the Wind Development Assets Purchase and Sale Agreement, IPL agreed to transfer to Franklin County Wind, LLC, land rights, wind turbine supply agreements, interconnection rights, and other development-related assets. The purchase price exceeds \$100,000.<sup>2</sup>

IPL argues it was not required to seek Commission approval of the agreement because the statutes establishing Commission oversight of utility contracts did not apply. Specifically, IPL argues that the rights transferred in the agreement 1) were accounted for as "nonutility property"; 2) were never put into service to the benefit of ratepayers; 3) were never part of a utility system; and 4) did not subject ratepayers to any costs because the utility sold them to Franklin County Wind for a price that IPL claims it had determined was "the higher of [the assets'] cost or market [value]." IPL further contends that the agreement has "no regulatory impact" and is therefore not within the scope of the Commission's jurisdiction.

The Department and the OAG contend that the agreement is subject to Commission approval under Minnesota Statutes sections 216B.48 and .50. They assert that notwithstanding IPL's rationale for not submitting the agreement for Commission review, the agreement warrants review under the two statutes.

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<sup>2</sup> IPL designates the exact amount as trade secret information.

The OAG argues that IPL incurred costs to acquire assets for windfarm development that benefited more than one project. In the OAG's view, IPL's arrangement to sell one of the related projects may subject ratepayers to an unjustified portion of the shared costs. The OAG contends that the Commission's statutory jurisdiction to regulate agreements with affiliated entities is clear.

The Department contends that information it received from IPL contradicts IPL's claim that all of the relevant assets were accounted for as "nonutility" property. The Department asserts that the Commission should require IPL to make a complete affiliated interest filing so that the Department can examine whether the agreement is reasonable and in the public interest.

The OAG and the Department also recommend that the Commission consider penalizing IPL for what they characterize as repeated failure to disclose transactions that are properly subject to Commission review.

IPL, in reply, maintains that it was justified in its belief that the agreement was not subject to Commission approval. The Company argues that the case *Minnegasco v. Minnesota Public Utilities Commission*, 549 N.W.2d 904 (Minn. 1996), dealt with a directly analogous situation and that the Minnesota Supreme Court concluded that the Commission does not have the authority to regulate transactions of the kind embodied by the Wind Development Assets Purchase and Sale Agreement.

### **III. Commission Action**

The Commission concludes that the Wind Development Assets Purchase and Sale Agreement is subject to commission approval under Minnesota Statutes §§ 216B.48 and 216B.50, and will therefore require IPL to make appropriate filings seeking Commission approval of the agreement.

#### **A. The Agreement is Subject to Commission Approval Under Section 216B.48.**

The Wind Development Assets Purchase and Sale Agreement satisfies the statutory definition of a contract between a utility and an affiliated interest contained in Minn. Stat. § 216B.48, subd. 3. The authority conferred by the statute is clear. Under that statute, no contract between a utility and an affiliated interest is valid or effective until approved by the Commission. The Commission concludes that no aspect of the agreement eliminates the Commission's statutory obligation to review the agreement.

IPL contends that its accounting treatment of the windfarm assets precludes Commission review. But the statute does not contemplate an exception based on the accounting characterization of the assets subject to the agreement.

The FERC "Nonutility Property" accounting category does not, as the name might suggest, contain property not belonging to the utility. The account includes property "owned by the utility, but not used in utility service and not properly includible in account 105, Electric Plant Held for Future Use."<sup>3</sup> Assets can be moved between the Nonutility Property account and the Electric Plant in Service and the Electric Plant Held for Future Use account (among others) as the utility's plans

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<sup>3</sup> 18 C.F.R. § 101 (2012).

for (or use of) the assets change.<sup>4</sup> Classifying an asset as “nonutility property” for accounting purposes does not affect the Commission’s statutory authority to review agreements pertaining to the asset.

Nor does claiming that disposition of utility assets imposes no cost on ratepayers divest the Commission of its obligation to review the agreement. The Commission has a statutory duty to determine whether an agreement is reasonable and in the public interest. It may ultimately agree that sale of a utility asset meets the statutory criteria, but under Minn. Stat. § 216B.48 the Commission must make that determination.

The Commission agrees with the OAG that the *Minnegasco* case is not instructive here. The Supreme Court in that case considered Commission authority to impute revenue from an affiliate for ratemaking purposes. The Court expressly stated that its decision did not address the scope of the Commission’s authority under Minn. Stat. § 216B.48.<sup>5</sup>

The Commission’s statutory authority to review this contract between a utility and its affiliate is unambiguous. Because the Commission is acting consistent with its clear statutory obligation under Minn. Stat. § 216B.48, *Minnegasco* has no application.

Nor does IPL’s contention that the Purchase and Sale Agreement has no “regulatory effect” diminish the Commission’s authority to review the agreement. IPL misreads the statement in the Commission’s September 14, 1998, order concerning the extent of Commission authority. The Commission has jurisdiction to consider the Purchase and Sale agreement under Minn. Stat. § 216B.48.

Accordingly, the Commission will require IPL to make a complete affiliated interest filing under Minn. Stat. § 216B.48, commission rules and the Commission’s September 14, 1998, order in Docket No. E, G999/CI-98-651, detailing procedures for affiliated interest filings.

#### **B. The Agreement is Subject to Commission Approval Under Section 216B.50.**

The Commission further concludes that IPL must also seek approval of the agreement under Minn. Stat. § 216B.50. The cost of the assets that IPL sought to transfer in the Purchase and Sale Agreement was not fully segregated from costs borne by ratepayers. IPL began multiple wind generation developments, incurring some costs to benefit all of the developments. IPL then sought to sell one of the related developments.

The Commission views these related wind development projects as an interrelated whole. The entangled development costs evident in this case require scrutiny in light of IPL’s effort to sell one of the related development projects. The Commission therefore concludes that approval under § 216B.50 is required.

The Commission will require that IPL file for approval of the Wind Development Assets Purchase and Sale Agreement under Minnesota Statutes §§ 216B.48 and 216B.50, and in accordance with

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<sup>4</sup> *Id.*

<sup>5</sup> *Minnegasco v. Minn. Pub. Util. Comm’n*, 549 N.W.2d 904, 909 n.7.

the Commission's September 14, 1998 order in Docket No. E, G999/CI-98-651 and Minnesota Rule 7825.2200.

### **C. Remaining Issues**

Finally, the Commission will not act on the request to impose a penalty on IPL at this time, but may consider the question at a later time. The Commission will take no action on the petitions in Docket Nos. 12-32, 12-187, 12-192, or 12-1157, pending Commission consideration of the filings ordered below.

### **ORDER**

1. Interstate Power and Light Company's Wind Development Assets Purchase and Sale Agreement with Franklin County Wind, LLC, is subject to Commission approval under Minnesota Statutes §§ 216B.48 and 216B.50.
2. Interstate Power and Light Company shall file a complete petition for approval of the Wind Development Assets Purchase and Sale Agreement under Minn. Stat. § 216B.48 in accordance with the Commission's September 14, 1998 order in Docket No. E, G999/CI-98-651 and Minnesota Rule 7825.2200.
3. Interstate Power and Light Company shall make a filing seeking Commission approval of the Wind Development Assets Purchase and Sale Agreement under Minn. Stat. § 216B.50.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary



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