

October 17, 2018

PUBLIC DOCUMENT

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

RE: **PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/M-18-603

Dear Mr. Wolf:

Attached are the **PUBLIC** comments of the Minnesota Department of Commerce, Division of Energy Resources, (Department or DOC) in the following matter:

Minnesota Power's Request for Approval of an Amendment to an Electric Service Agreement between Verso Minnesota Wisconsin LLC and Minnesota Power.

The petition was filed on September 21, 2018. The petitioner is:

David R. Moller
Attorney
Minnesota Power
30 West Superior Street
Duluth, MN 55802

The Department recommends **approval, pending required information in MP's reply comments** and is available to answer any questions the Commission may have.

Sincerely,

/s/ EILON AMIT
Statistical Analyst

EA/ja
Attachment



Before the Minnesota Public Utilities Commission

Public Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E015/M-18-603

I. BACKGROUND

Below is a list of earlier electric service agreements that preceded the instant petition for approval of an amendment to the Electric Service Agreement (Amended Agreement) between Minnesota Power (MP or Company) and Verso Minnesota Wisconsin LLC (Verso).

On August 1, 1997, MP and Consolidated Papers entered into a restated electric service agreement.

On November 20, 1997, the Minnesota Public Utilities Commission (Commission) issued an Order approving the above-mentioned restated electric service agreement (Docket No. E015/M-97-1305).

On September 2000, Stora Enso purchased Consolidated Papers.

On October 13, 2000, MP filed a petition for approval of amendment to the Electric Service Agreement between Stora Enso and MP (Docket No. E015/M-00-1389).

On February 8, 2001, the Commission issued an Order approving the above-mentioned Amended Electric Service Agreement.

In 2005, MP and Stora Enso amended and restated their Electric Service Agreement, and on March 7, 2006, the Commission issued an Order approving the above-mentioned Amended Agreement (Docket No. E015/M-05-1989).

In 2007, NewPage acquired Stora Enso's paper assets. As part of the acquisition agreement, the Electric Service Agreement between MP and Stora Enso was transferred to NewPage.

On September 7, 2011, NewPage filed for Chapter 11 bankruptcy and then on August 13, 2012 proceeded to file a Plan of Reorganization. The Plan of Reorganization was filed with the US Bankruptcy Court (Court) in the District of Delaware. On September 25, 2012, NewPage filed a petition with the Court to assume contracts, including the instant Amended Agreement. At that

time MP expected a Court decision on NewPage's Reorganization Petition by the end of 2012. In 2012 the Court approved NewPage's Reorganization.

Also on September 25, 2012, MP filed a petition with the Commission requesting an amendment to the Electric Service Agreement with NewPage (Amendment or Amended Agreement) to extend the term through at least December 31, 2022 and incorporate other modifications.

The Commission approved the 2012 Amendment in Docket No. E015/M-12-1025 in an Order dated December 10, 2012.

In 2015 Verso acquired NewPage including the Agreement.

On January 26, 2016, Verso filed Chapter 11 bankruptcy.

On July 15, 2016, Verso emerged from bankruptcy following a successful financial restructuring, which included the existing Electric Service Agreement with Minnesota Power (MP or the Company).

II. SUMMARY OF MINNESOTA POWER'S PETITION

MP filed this Petition for an amendment to its Electric Service Agreement with Verso under Minn. Stat. §216B.05, Subd. 2a, which states:

Subd. 2a. **Electric service contract.** A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval by the commission pursuant to the commission's rules of practice. Contracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes.

The key provisions of the Amendment are:

- A. Verso's Duluth Mills must purchase its electric service requirements from MP at least until December 31, 2024.

- B. The Amendment modified Verso's Large Power Incremental Production Service Threshold.
- C. The Amendment provides additional risk protection for MP through a financial corporate guarantee.

III. DEPARTMENT ANALYSIS

A. INTRODUCTION

The Amended Agreement should be approved only if it is in the public interest. For the Amended Agreement to be in the public interest it must meet the following conditions:

1. Under the Amended Agreement, the variable cost to MP of providing the electric service to Verso must be less than the revenue received by MP from providing the service.
2. MP's other ratepayers must not be negatively affected by the Amended Agreement.
3. The rates under the Amended Agreement must not be discriminatory, namely the rate would be available to any other large power customer of MP facing similar circumstances to those of Verso.

B. ANALYSIS

First, the Department analyzes each of the amendments proposed in the Amended Agreement. Second, based on that analysis the Department assesses whether the Amended Agreement meets the conditions stated by the Department as necessary conditions for its approval. Finally, the Department provides its conclusions and recommendations.

1. The Proposed Amendments

All the amendments are with respect to the Electric Service Agreement of September 25, 2012 between MP and NewPage.

a. Terms of Agreement (Paragraph 2)

The proposed amendment to the Terms of Agreement would extend the duration of the Electric Service Agreement to December 31, 2024. The original term expires on December 31, 2022.

Such an extension would be beneficial to both MP and its ratepayers. Since Verso's current and proposed rates include contributions to MP's fixed costs, MP's ratepayers benefit from such contributions that would otherwise have to be collected from them. The extension of the contract would benefit MP by providing it with an additional stable source of revenues until December 31, 2024.

b. Large Power Incremental Production Service (Paragraph 3.J) is replaced with a new Paragraph J as follows

MP's Rider for Large Power Incremental Production Service (IPS) allows a Large Power customer to purchase incremental energy at MP's marginal energy cost (plus a small energy surcharge and incremental transmission costs) when the customer's demand exceeds a predetermined demand level. Due to production efficiencies implemented by Verso, Verso can now maintain the same level of energy usage using less demand than before. The Amended Agreement proposes to recognize this increased efficiency by lowering the pre-determined demand level (the IPS threshold, or IPST) from **[TRADE SECRET DATA HAS BEEN EXCISED]** kW to **[TRADE SECRET DATA HAS BEEN EXCISED]** kW. This proposed change would allow Verso to lower its energy cost while at the same time allowing MP to recover its incremental energy and transmission costs without negatively impacting MP's other ratepayers.

Paragraph J of the proposed ESA includes additional provisions to recognize the changing environment of the paper industry.

First, if Verso **[TRADE SECRET DATA HAS BEEN EXCISED]**.

The Department notes that new Paragraph J in its totality would result in:

- (i) No impact for other MP's ratepayers;
- (ii) Potential benefits to Verso; and
- (iii) Potentially lower revenues for MP.

As a result of (iii) above MP may face a revenue shortfall. Such a revenue shortfall would be fully borne by MP until it files a new rate case.¹ Such potential revenue shortfall would have to be addressed in MP's next rate case.

¹ As MP identified in its February 1, 2018 compliance filing in Docket No. E015/M-16-564, Verso is one of MP's energy-intensive, trade-exposed (EITE) customers. As such, the Commission's April 20, 2017 *Order Authorizing Cost Recovery with Conditions* in the EITE matter, Docket No. E015/M-16-564, would require increases in revenues from Verso due to an EITE rate to be refunded to other ratepayers between rate cases. However, there would be no effect on other ratepayers due to decreases in Verso's revenues due to the proposed changes in this ESA.

c. A New Paragraph 5

The new provision provides for the parent guaranty. Under this guaranty MP shall have the right to invoke the Verso parent guaranty.

This provision would lower the financial risk of MP.

d. Paragraph 6 – Weekly Expedited Billing is Modified

Under the existing Paragraph 6, Verso may terminate the weekly payments if it meets certain financial conditions.

The new Paragraph 6 requires Verso to pay weekly, unconditionally.

The requirement of weekly payments would further reduce MP's financial risk.

2. Necessary Conditions for Commission Approval

a. Under the Amended Agreement, would the revenues received by MP from Verso exceed MP's variable costs of providing the electric service to Verso?

The only provisions of the Amended Agreement that impact MP's variable cost recovery are in the new Paragraph 3.J (Incremental Production Service).

These provisions, potentially, could increase the amount of energy that Verso could purchase at a discount rate. However, the discount rate is set at a level higher than MP's incremental energy costs. Therefore, under the provisions of Paragraph 3.J, MP's revenues would still be higher than MP's variable costs. Based on the above analysis, the Department concludes that under the Amended Agreement, MP's revenues from Verso would remain higher than MP's variable costs of serving Verso.

b. Does the Amended Agreement negatively affect MP's other ratepayers?

Based on its analysis of each of the proposed changes contained in the Amended Agreement, the Department concludes that none of the newly proposed provisions would negatively impact MP's other ratepayers.

- c. *Are the Proposed Rates and Conditions of Service, under the Amended Service Contract, available to other MP Large Customers facing similar circumstances to those of Verso?*

Utility rates are controlled by several Minnesota Statutes. The fundamental Minnesota Statute that regulates rates is Minn. Stat. §216B.03, which states among other things:

Rates should not be unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable and consistent in application to a class of customers.

Minn. Stat. §216B.05, subd. 2a explains the regulatory treatment of electric service contracts. It states:

Subd. 2a. **Electric service contract.** A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval of the commission pursuant to the commission's rules of practice. Contracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes.

Reading Minn. Stat. §216B.03 together with Minn. Stat. §216B.05, Subd. 2a, the Department concludes that Minnesota Statutes allow MP to enter into an electric service agreement with Verso consisting of terms and conditions that are unique to this agreement as long as similar terms and conditions are available to other MP customers. In its petition, MP states:

In accordance with the requirements of Minn. Stat. §216B.03, .06, and .07, Minnesota Power has always applied the Large Power Service Schedule and the service agreements it enters into thereunder in a fair and equitable manner between and among its LP customers. Minnesota Power intends to continue this practice by making similar terms and conditions available to other LP customers who are similarly situated.

The Department agrees with MP that the proposed Amended Service Agreement meets the requirements of Minn. Stat. §216B.03, .06 and .07. However, in its February 26, 2009 Order in Docket No. E015/M-08-1344, the Commission supported MP's commitment to provide the following information in future ESA petitions:

- d. Minnesota Power will clearly identify any terms of a proposed ESA that may be in conflict with the applicable tariff. Where the ESA has a service condition or term different from the LP Service Schedule, the Company will identify the difference and clarify whether specific Commission approval is required.
- f. Minnesota Power will describe any potential conflicts between ESA contracts and tariffs, and provide a justification as to why the ESA should control, including relevant commission precedent. In cases of unreconcilable conflict between the applicable tariff and an ESA, Minnesota Power will take action to resolve the conflict through changes to the ESA or the tariff.

Since it does not appear that MP provided this information in their petition, the Department expects MP to either point to where the information is in their petition or provide this information in reply comments.

Based on its review and analysis of the amendment to the ESA between MP and Verso the Department is not aware of any contradiction between the proposed amendments and any provisions in the LP Service Schedule, nor any potential conflicts between the amendments to the ESA between MP and Verso and the applicable tariffs. Thus, unless any concerns arise from MP's reply comments, the Department concludes that there are no conflicts between the proposed Amended Service Agreement and MP's tariffs.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

Based on its review and analysis of MP's petition to date the Department concludes that:

1. The Amended Agreement is in the public interest because:
 - a. For each year of the Agreement, the revenues received from Verso would remain higher than MP's variable costs of serving Verso; and
 - b. The extension of the Agreement through, at least, December 31, 2024, would benefit MP's other ratepayers by lowering their share of MP's total fixed costs.
2. The terms and conditions of service under the Amended Electric Service Agreement satisfy the requirements of Minn. Stat. §216B.03 and Minn. Stat. §216B.05.

B. RECOMMENDATIONS

Based on its review and analysis of MP's petition and based on its conclusions, and pending the required information in MP's reply comments, the Department recommends that the Commission approve the proposed Amended Agreement between MP and Verso.

/ja

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
Public Comments**

Docket No. E015/M-18-603

Dated this 17th day of October 2018

/s/Sharon Ferguson

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